1091.

SUPREME COURT OF THE UNITED STATES.

No. 173.

ROBERT WICKLIFFE, ADMINISTRATOR, WITH THE WILL ANNEXED, OF LUKE TIERNAN, DECEASED, COMPLAINANT AND APPELLANT,

VS.

BENJAMIN EVE, IN HIS OWN RIGHT, AND AS ADMINISTRATOR OF JOSEPH EVE, DECEASED, RICHARDSON ADAMS, EXECUTOR OF RANDOLPH ADAMS, DECEASED, ROBERT P. LETCHER, JAMES BALLINGER, AND FRANKLIN BALLINGER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

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Pleas before the Honorable Thomas B. Monroe, one of the Judges of the Circuit Court of the United States for the 8th Circuit and Kentucky District, held at the Capitol in Frankfort, at the May Term of said Court, eighteen hundred and fifty-three, and on the 28th day of June in said year.

R. WICKLIFFE, Adm'r. of L. TIERNAN, Compl't.
vs.
BENJAMIN EVE and others, Deft. } In Chancery.

Be it remembered that heretofore, to wit, on the 5th day of November, A. D. 1848, came Robert Wickliffe, administrator, with the will annexed of Luke Tiernan, into the Clerk's Office of the Court aforesaid, and filed his bill of complaint against Benjamin Eve, administrator of Joseph Eve, Richardson Adams, executor of Randolph Adams, James Ballinger, Robert P. Letcher, and Francis Ballinger, which bill is in these words, to wit:—

(*Bill.*)

To the Honorable the Judges of the Circuit Court of the United States for the District of Kentucky, humbly complaining, Robert Wickliffe, administrator with the will annexed of Luke Tiernan, showeth unto your honors that many years ago, he as attorney-at-law, recovered for Luke Tiernan, David Williamson, and Charles Tiernan, merchants, trading under the name and style of Luke Tiernan & Sons, citizens of the State of Maryland, two judgments against John G. Eve and Joseph Eve (deceased), and Benjamin Eve and James Ballinger, who are made defendants to this bill, and one Randolph Adams, deceased, in this Honorable Court, to which reference is made, to show their dates, amounts, and whatever may require information as to their nature or contents; that sundry executions were issued on said judgments, but no part of the money appears to have been made by levy, until the said defendants were enjoined by writ of attachment, issued from the General Court of Kentucky, at the suit of your orator against the said Luke Tiernan & Sons. But sundry payments were made on the debts to Levy & Sons, and to your orator and his then partner, A. K. Woolley, for which several sums so paid, receipts were duly executed, for which your orator was, and is willing to give credit upon the said judgments; your orator states the payments being made in part to himself, and partly to his then partner, and also a considerable part to Levy & Sons, and the attachment case being undetermined. The said Joseph Eve for himself and others, defendants, came to an adjustment of his credits so far as he had paid or caused to be paid to Wickliffe and Woolley. Eve gave a statement of his payments as he claimed them, and as your orator admitted them, to be correct

in his own handwriting, which is impounded in the suit still depending in the General Court, but it is well known to be wholly in the handwriting of the said Joseph Eve, to all the defendants except Charles Tiernan, an official and accurate copy of which is herewith filed and made part of this bill. The said Eve and your orator made a calculation of the amount of one note, and after deducting the payments he claimed, left a balance to a considerable amount, but how much, he does not certainly recollect; but the said Joseph Eve took possession of the paper on which the calculation was made, and went from and left your orator's house with a view of ascertaining how much was due on the other note or judgment, after crediting his payments made to Levy & Son, promising to return, and ascertain as near as we could, the whole balance due, we not having the amount of costs in both suits before us; said Eve, however, did not return, nor did your orator again see him, until on his way to Texas, when he called, with other objects, to apologize to your orator for being compelled to leave the State, without paying to him the balance, as he had promised and fully intended to do before he left the State, but stated that he found himself mistaken in the amount due, it being much larger than he expected, arising from the compounding of the interest, and the great length of time interest had accumulated. He then assured your orator, that he would take with him his receipts to Frankfort, and ascertain the principal, interest, and costs, and the balance due, and leave the papers either with the clerk, or Col. Davidson; and that he would pay out of his salary as *charge*, or cause it to be done by his friends in Kentucky, in the course of a short time, or as soon as he could possibly do so, the whole balance; and your orator was to call on whoever he left the papers with, and have them filed among the judgments, indorsing the proper credits on the judgments. Your orator states that Eve left him, and has never been in Kentucky since, and died in Texas; but fully confiding in his statement, that he would either leave his papers with Mr. Hanna, or Col. Davidson, the first time he was in Frankfort, called on both Hanna and Davidson, and could hear nothing of the papers, and immediately addressed Eve a letter, informing him of his being unable to find or hear of the papers; urging him to not only inform him of what he had done with the papers, but not to fail to remit the balance, or cause it to be done; to this letter he never received a reply, and being dissatisfied your orator wrote to said Benjamin Eve, threatening to issue the execution if the money was not paid, which he presumes drew from Joseph Eve to him, the letter marked (B) and made part of this bill. In this letter the said Joseph Eve for the first time ever breathed to your orator, that he had not received every credit that he was entitled to, and even asked, for your orator had made no memorandum of the payments, he thinks, until he made the calculation, and then only memorandums of the payments claimed by Eve: that this omission was owing to the fact that a part of the

money was received by Woolley, and a part by Levy. On receiving the letter of Eve, your orator immediately called upon Judge Woolley, who declared that he had not received a cent, but what he receipted for, and referred your orator to his receipts: these your orator had seen in J. Eve's possession, and they corresponded exactly in amount with Eve's memorandums; that he thinks, did not state the date of payments, but I had taken and handed him, as before stated, the dates and amounts, which corresponded with the receipts and amounts, and that statement was no doubt left by Eve and found with the other papers, and can now be produced by those that filed or handed the papers to be filed, in the suit in chancery, hereafter to be named.

Your orator states that, fearing that Charles Tiernan, who was represented as both insolvent and reckless; he obtained a special restraint and injunction upon the defendants in the judgment against their paying to the Tiernans, but not restraining them from paying to himself as their attorney and creditor. But your orator having received, as he thinks, by himself and partner, the sums credited to Eve before he filed his injunction, he remitted the amount received to Tiernan, reserving or retaining what he supposed would about cover the costs and his charges; that some time after the death of Joseph Eve he was applied to by his late partner, A. K. Woolley, in consequence of a request from Robert P. Letcher, Esq. to know if I would, or could not, issue executions and have the balance of the debt made out of some slaves, the property of Joseph Eve, but mortgaged in the first place to R. Adams, to indemnify him as Eve's security in the judgments aforesaid, as he, Letcher, had an under mortgage or claim, and he wished his debt paid, which could not be done until Tiernan's debt was paid. I told him that I could and would do so, and accordingly wrote to the clerk, ordering the executions, which certainly I should not have done but for the message delivered me by Judge Woolley from the said Letcher, which excited my fears that the slaves might be taken away, to the loss of the other creditors as well as myself; but instead of your orator making the debt, he was stopped by a bill of injunction, in which he was charged in substance of having received the entire payment, or nearly so, and still desiring and determining to coerce a balance of the debt, greatly more than remained due; upon a meeting of the Judges of the Federal Court, your orator applied for and obtained a rule upon the complainants to be made a party defendant in the cause, but at a subsequent day of the term this court rescinded the order, allowing your orator to defend, and made an order that if the defendants then apparent on record answered before next court, I should not be heard, otherwise your orator might be heard, the suit then standing against Charles Tiernan and David Williamson, although David Williamson had departed this life long before the filing of the bill and obtaining the injunction. Your orator supposes and charges that the complainants obtained the

answer of Tiernan, and thereby precluded your orator under the rule from being heard, and your orator knew nothing of the filing of the answer of Charles Tiernan until he learnt that his answer was filed, and the cause set down for trial in the name of him and the dead defendant, Williamson, and a decree perpetuating the injunction as to the whole debt made, and this founded upon a fraudulent and false answer obtained by the complainants from Charles Tiernan, by which the estate of Tiernan has been cheated and defrauded out of a balance of nearly, or quite two thousand dollars, which your orator was able and desirous of preventing, and would have done so if this Honorable Court had allowed him to have defended and exposed the untrue allegations of the bill filed by the complainants. Your orator states that the decree was obtained by the grossest fraud on the part of said Tiernan and complainants; he hopes to show in part by errors of law and fact in this court in first excluding your orator from defending as an administrator with the will annexed of Luke Tiernan, and then in adjudging on the face of the bill and answer, the defendant to have been paid, when the answer was proven false by the account filed by said Tiernan, in which he stated that the account he filed of payments by your orator overpaid one note, and that he presumed the other note was paid off, or so stated in substance, when in fact the account filed by him left nearly fifteen hundred dollars due on one note, and the account, as well as payments made to Leavy, showed that the second note was not paid off by about two or three hundred dollars, for, as before stated, the payments made by Wickliffe, which Tiernan falsely stated paid off one note, were less than the sums credited and received by Wickliffe and Woolley, and the whole balance due from the defendant to Luke Tiernan's administrator on the 9th day of January, 1848 was $1,774 63 cents, as will appear from an official copy of the master commissioner's report in the case of Wickliffe *against* Tiernan & Eves, and which is herewith filed and made part of this bill, every cent of which your orator charges to be due to him as administrator, with the accruing interest. This account, made up by an able accountant, in the presence of the attorneys of the parties, evinces, beyond a doubt, the error of this Honorable Court in taking the answer of Tiernan as true, and not allowing your orator the privilege of defence, whereby he would have relieved the court from the mistakes which have operated so oppressively upon himself individually, and so wrongfully upon the family and creditors of Luke Tiernan.

Your orator will submit respectfully these remarks to the court, trusting that the manifest injustice done him will be relieved against from the mere inspection of the record and papers which he will lay before the court; but he will still, he trusts, be able to aid the court in its pursuit of truth and justice by exposing the imposition practised upon the court, in not only the suggestions of falsehood,

but in suppressing truths which the said Charles Tiernan ought to have divulged.

The first firm of Luke Tiernan & Son was constituted of Luke Tiernan and David Williamson, Luke Tiernan being the father-in-law of Williamson and the capitalist; after, however, some years of operation of that firm, a new firm of Luke Tiernan & Sons was formed, consisting of Luke Tiernan, David Williamson, and Charles Tiernan, and all the capital of the first firm went into the second. David Williamson went out of the second firm many years ago, the capital still remaining the same. This firm was styled Luke Tiernan & Son, and was greatly injured by Charles Tiernan, who involved his father in a heavy debt, and after assigning to his father all the interest he had in both firms, and stipulating not to meddle with, or obstruct him in the collection and management of the funds of the firm, and acknowledging an indebtedness of $97,800, not only ceased to be a partner of the firm, but applied for and obtained his discharge as an insolvent debtor from the proper court in Maryland, all of which your orator believes and charges, and which he thinks will fully appear from the copies of said deed of assignment, and the proceedings in the said court, which are herewith filed and made part of this bill.

The second firm of Luke Tiernan being entirely dissolved and out of existence, and the partner, Charles, utterly insolvent and released from his debts, Luke Tiernan departed this life, having executed his will in due form, and appointed executors, who qualified in the State of Maryland, and no person applying for administration on his estate in this county, your orator applied for and obtained letters of administration from the proper court (as creditor), as will appear by his letters of administration, herewith filed and made part of this bill. That these facts were, as he verily believes and charges, well known to the defendants aforesaid, they being all parties to the suit in Chancery depending between them and your orator and Tiernan, in which they are substantially charged and abundantly proven. Your orator states that notwithstanding these pregnant facts, still the defendants procured of the said Charles Tiernan, an answer as a surviving partner, who falsely and fraudulently, with a view to cheat and defraud your orator, admitted the entire payment of the judgments, or admitted the fact substantially to be so, which your orator charges he did, well knowing the true state of the indebtedness, he having received and entered or caused to be entered, the credits on the payments made by Leavy and your orator, and having them before him when he fabricated his answer admitting payment; and your orator charges that the defendants, well knowing the answer to be false, and that a much larger sum was due than the answer admitted, obtained the decree upon it and are setting up such surreptitious decree against your orator's just demand against the estate of Luke Tiernan and against himself, who received and converted to his use and that of his father's, every dollar of the overpayment made by

your orator on Owings's debt, which, with the interest thereon, amounted on the said 9th day of January, 1848, to $3,517 22 cents, the whole of which must fall upon the estate of Tiernan, unless the defendants in the judgment are made pay up the balance due from them to your orator as administrator with the will annexed of Luke Tiernan; indeed, your orator fears that owing to the great defalcation of said Charles Tiernan and others, losses that it may turn out that the executors eastward may not have assets to meet his demands, should the defendnts escape the payment of the balance justly due from them by reason of the said decree.

Your orator states that Joseph Eve, to secure Randolph Adams, deceased, against his bonds and the judgment on the day of executed to him a mortgage, the copy of which is herewith filed, for sundry slaves and other property; that the defendant, Robert P. Letcher, by some means not known, prevailed on Benjamin Eve to carry the said slaves to Francis Ballinger, both of whom are also made defendants to this bill; he, the said Ballinger, having, for a sum of money, obtained Letcher's under mortgage or warranty against your orator's claim, as attaching creditor and administrator of said Tiernan. Your orator charges that John G. Eve and Joseph Eve were in point of fact from the time the judgments were taken without property liable to sale by execution, and about the date of the judgments, John G. Eve left the State insolvent, and so returned and died, having first taken the benefit of the bankrupt law; and as he is informed and believes Joseph Eve had (except mortgages) no property, and that the mortgage to pay the debt to Tiernans covered all of his valuable property when he left the State and for many years before; that Benjamin Eve hath administered on the estate, if any left by Joseph Eve, and is, as administrator, made a defendant hereto; that Randolph Adams is dead, and Richardson Adams is his executor, and as such, also made a defendant. Yet the defendants, though sensible of the premises, but combining and confederating with divers persons unknown to your orator, have taken shelter under the decree aforesaid, obtained against the said Charles Tiernan, who had no interest or claim in equity whatever to the said judgments or any part of them, and although your orator is justly entitled to the benefit of said judgments, still the iniquitous decree permitted to pass by reason of the fraudulent conduct of the said Charles, as before detailed, your orator is without remedy at law, and only relievable in equity, where frauds are cognizable and fraudulent decrees are set aside, may it please your honors to grant to your orator the *comth's* writ of s'poe, by which the defendants may, a full, true, and perfect answer make to this bill as if the same were repeated by way of interrogatory; and that your honors will please to examine and review said decree, and that the whole, or so much of it, may be set aside as prevents your orator from recovering what of said judgment is justly due, either by using the name of said Charles, or by a decree for such balance as this court

shall believe to be justly due to your orator as administrator to said Tiernan, and that the mortgaged property, or so much of it as may be necessary, be decreed to be sold to raise the amount remaining due, or be decreed to be paid by the surviving defendants to the judgments and the administrators of Joseph Eve, and executor of Randolph Adams, and the premises considered to grant to your orator such other or further relief as to equity shall appertain, and he will ever pray.

ROBERT WICKLIFFE.

(*S'poe in Ch'y.*)

Upon the filing of the foregoing bill in chancery, the following subpœna issued, to wit:—

[L. S.] The United States of America, to the Marshal of the Kentucky District, greeting:—

You are hereby commanded to summon Benjamin Eve, as administrator of Joseph Eve, Richardson Adams, executor of Randolph Adams, James Ballinger, Robert P. Letcher, and Francis Ballinger, to appear before the judges of our eighth Circuit Court of the United States of America in and for the District of Kentucky, at the Capitol in Frankfort, on the first Monday in January next, to answer a bill in chancery, exhibited against them, in our said court by Robert Wickliffe, administrator with the will annexed of Luke Tiernan, and this they shall in nowise omit under the penalty of four hundred dollars. And have then there this writ.

In testimony whereof, Roger B. Taney, Esq., Chief Justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, this sixth day of November, A. D. 1848, and in the seventy-third year of our independence.

Attest, JNO. H. HANNA,
C. C. C., K. D.

Indorsement: The within named defendants must enter their appearance to the within suit, on or before the return day hereof, otherwise the bill may be taken *pro confesso.*

Attest, JNO. H. HANNA,
C. C. C., K. D.

Marshal's Return.

Executed Dec. 20, 1848, on Robert P. Letcher.

G. H. JETT,
Deputy Marshal.

Not served on the others for the want of time.

G. H. JETT,
Deputy Marshal.

And afterwards, on the 5th day of February, 1849, the following alias *S'poe in Ch'y* issued, to wit:—

(*S'poe in Ch'y.*)

[L. S.] The United States of America, to the Marshal of the Kentucky District, greeting:—

You are hereby commanded to summon Benjamin Eve, administrator of Joseph Eve, Richerson Adams, executor of Randolph Adams, James Ballinger, Robert P. Letcher, and Francis Ballinger, to appear before the Judges of our eighth Circuit Court of the United States of America, in and for the District of Kentucky, at the Capitol in Frankfort, on the first Monday in April next, to answer a bill in chancery, exhibited against them in our said court by Robert Wickliffe, administrator, with the will annexed of Luke Tiernan, deceased; and this they shall in nowise omit under the penalty of four hundred dollars; and have then there this writ.

In testimony whereof, Roger B. Taney, Esq., Chief Justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, this 5th day of February, A. D. 1849, and in the seventy-third year of our independence.

Attest, JNO. H. HANNA,
C. C. C., K. D.

Indorsements: The within named defendants must enter their appearance to the within suit, on or before the return day hereof, otherwise the bill may be taken for confessed.

Attest, JNO. H. HANNA,
C. C. C., K. D.

To be executed on Ben Eve, administrator, Richerson Adams, administrator of R. Adams, James Ballinger and Francis Ballinger only.

Attest, JNO. H. HANNA,
C. C. C., K. D.

Marshal's Returns.

Executed on Francis Ballinger, February 5, 1849.

G. H. JETT,
Deputy Marshal,

For JNO. LANE,
Marshal Kentucky District.

Executed March 12, 1849, upon Richerson Adams, executor of Randolph Adams, deceased, and James F. Ballinger, Benjamin Eve not found, he being out of the State of Kentucky.

B. W. ANDERSON,
Deputy Marshal,

For JNO. LANE,
Marshal Kentucky District.

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(*Order.*)

And afterwards, to wit: at rules held in the Clerk's Office, before the clerk, on Monday, the 5th day of March, 1849 (until which time this cause was continued), came the defendants, R. P. Letcher and Franklin Ballinger, and filed their separate answers herein.

Which answers are as follows:—

(*Answer of R. P. Letcher.*)

The answer of Robert P. Letcher, to a bill in chancery, filed in the Circuit Court of the United States for the District of Kentucky against himself and others, by Robert Wickliffe.

This respondent for answer to said bill, or so much thereof as he is advised it is necessary for him to answer, answers and says, that he knows nothing, of his own knowledge of the facts in regard to the indebtedness of Joseph Eve, deceased, or his co-defendants to Tiernan & Sons at any time, but he has heard that there were two judgments; but his information and belief is, that they have been long since paid off by Joseph Eve; he is furthermore informed, and believes that his co-defendants, who who were parties to said judgment, have upon bill filed and regularly prosecuted, obtained a perpetual injunction to said judgments by a decree of this Honorable Court, in which all the proper parties were made, and duly and legally prosecuted; and if there was any fraud in obtaining said decree, he is a stranger to it, and therefore denies it most emphatically, and requires proof thereof; he was no party to the suit himself, and therefore insists that he cannot be prejudiced by anything therein decreed; he is further advised, that the complainant had no right to be made a party to said suit in any way, and that his petition to be made a party was properly rejected by this Honorable Court; he is not apprised of the grounds upon which the injunction to the judgments of Tiernan & Sons *vs.* Eve was perpetuated; two grounds were taken by the pleadings in the case: First, That the judgments had been paid off: Secondly, That the securities who alone filed the bill, were released in consequence of the failure of the plaintiff in the judgments to pursue the principal with proper diligence, or to sue out execution in proper time to hold the sureties responsible, either of which grounds he is informed was sufficient to authorize and require the court to decree the perpetual injunction which was decreed; but it is most probable, from the fact that Charles Tiernan, the only surviving partner of the firm of Luke Tiernan & Sons, filed his answer, admitting that the judgments had been paid off, and that he had no claim to farther any sum upon said judgments, and that the executions thereon had issued without his orders or authority, and consent; that the injunction was perpetuated on the grounds that it had been fully paid off and satisfied.

Respondent further answering, says: That it is true that he held a mortgage upon from Joseph Eve, to secure and indemnify him in the repayment of two sums of $500 each, lent to said Joseph Eve at different times, and which had been upon interest for many ; that the mortgage covered certain slaves, then the property of Joseph Eve (he will file a copy thereof in due time); that after the death of Jo. Eve, and his debts remaining unpaid, together with the interests thereon, he was applied to by one Frank Ballinger to sell to him, Ballinger, his mortgage, as he desired to become the owner of some one or more of the slaves included in the mortgage, because of some marriage connection having taken place among the negroes; that to gratify said Ballinger, he did sell to him the mortgage which he held upon Jo. Eve's negroes, and at a loss of from three to five hundred dollars; and that he did warrant said Adams's mortgage, having understood and believing that not one cent was due to Tiernan & Sons upon the debts once due to them, and to indemnify Adams as surety, for which the same was given; and he yet believes that not one cent is due to said Tiernan & Sons on said judgment.

He says that he does not believe that Tiernan & Son owe the complainant one cent, nor that Luke Tiernan owes him anything; but, if Luke Tiernan does he denies the right of complainant to appropriate demands due to Luke Tiernan & Sons, to pay the individual debt of Luke Tiernan. He knows nothing of the complainant's demand against Luke Tiernan; he denies that he had any right to have administration of his estate in Kentucky. He pleads and relies upon the perpetual injunction against the judgments decreed by this court as a bar to complainant's demand to anything under them. He denies any liability on his part to complainant in any and every possible form, and, having answered, prays to be hence dismissed with a decree against complainant for his reasonable costs.

This respondent denies that he sent such message to him, complainant, by Judge Woolley; either he or Judge Woolley have misapprehended the character of this message. It was none others than this, "that this respondent desired that, if Tiernan & Son had any just demand upon Jo. Eve and Adams, that the same might be settled or in some way brought to a close;" but he made no request for execution to issue, his only desire was that there might be some final and conclusive settlement of the matter to free his claim under his mortgage from all shade of embarrassment; that he did not desire to interfere between those parties in any way to set on foot executions, &c.

Having answered, &c.

STATE OF KENTUCKY, FRANKLIN COUNTY, to wit:—

This day R. P. Letche appeared before the undersigned, Police Judge of the City of Frankfort, and made that what he has stated

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in the foregoing answer as of his own knowledge is true, and what he has stated from information be believes to be true.

Witness my hand, this 5th March, 1849.

L. HORD,
P. J. C. F.

(*Answer of F. Ballinger.*)

Answer of Franklin Ballinger.

Separate answer of Franklin Ballinger, sued as Francis Ballinger, by a certain Robert Wickliffe, as administrator, with the will annexed, of Luke Tiernan, in the Circuit Court of the United States for the District of Kentucky.

This respondent states that he is the owner of two of the slaves mentioned in the mortgage of Joseph Eve to Randolph Adams, to secure the latter from liability on account of his securityship for the former in a debt or debts due to Luke Tiernan; that he was also the owner of another, but in some way parted with him to Benj. Eve, without the possession having been changed. The slaves now in his possession are Porter and America; the latter is now the mother of five children, all born since the mortgage. The slave sold was an old man, by the name of Jim.

Your respondent states, that he regards himself as a nominal party, because he holds a bond on Robert P. Letcher, to indemnify him against any liability which he may incur by reason of the claim of Luke Tiernan; he states, that before he bought the slaves aforesaid he took said bond from said Letcher, and paid Letcher $1,500, part of the consideration to be given. He makes this, his answer, a cross-bill against the said Letcher, and calls upon him to say if he is not responsible to your respondent to the extent of the injury he may sustain, if the complainant should subject the slaves aforesaid to the payment of his debt; and upon such contingency your respondent prays for a decree over against the said Letcher, if any should be rendered against him.

Your respondent denies all knowledge of the fraud by which the complainant says the decree now sought to be reviewed was obtained, nor does he believe there was any fraud; on the contrary, he believes all was honest and fair.

Your respondent utterly denies that Joseph Eve had no property out of which complainant's debt could have been made; upon the contrary, if said debt has not in fact been paid, he feels confident it would have been paid by the said Eve, if pressed, at almost any time before Judge Eve left the United States.

Your respondent does not care, individually, whether the complainant is or is not successful, but he has good reason to believe that on the 4th day of March, 1837, Joseph Ballinger paid Judge Woolley, the partner of complainant, $500, for which the claim now sought to be revived should be credited. He states that he has ex-

amined the receipts of the said Eve now on file in the suit which the complainant seeks to review, and that there is none corresponding with the payment aforesaid. He states that the complainant has long since been advised of the payment of the $500, on the 4th March, 1837, or rather the reasons which this respondent had for believing such payment was made. Yet no mention is made of it in complainant's bill, nor any steps taken to find out from Joseph Ballinger whether he did, in fact, pay it or not. If Judge Eve never breathed it to complainant this respondent did, and it is strange that Judge Eve did not, especially as Judge Eve talked of it to others, and certainly sent the money to be paid to complainant or Judge Woolley, and never received it back, or had any other account of it.

Your respondent having fully answered, prays that complainant's bill may be dismissed if equity and justice appears to require it; but if otherwise, then he prays for a decree over against his co-defendant, R. P. Letcher, for all costs and damages which he may sustain; he prays for a decree for costs against complainant, and as in duty bound will ever pray, &c.

BALLINGER,
for himself.

MERCER COUNTY, SS:

This day Frank Ballinger personally appeared before the undersigned, an acting justice of the peace for said county, and made oath that the facts set forth in the foregoing answer so far as made upon his own knowledge are true, and so far as made from the information of others, he believes to be true. Given under my hand this 1st day of March, 1849.

JAS. MORGAN, *J. P.*

(*Order.*)

And afterwards, to wit, at rules held in the Clerk's Office, before the clerk, on Monday, the 7th day of May, A. D. 1849, came the defendants, Richard Adams, executor of Randolph Adams, and James F. Ballinger, by their counsel, and filed their joint answer herein. Which answer is as follows:—

(*Answer of Adams and Ballinger.*)

Answer of Richardson, Adams, and J. F. Ballinger.

Joint answer of Richardson Adams, executor of Randolph Adams, deceased, and James F. Ballinger, to a bill in chancery, exhibited against them and others in the Circuit Court of the United States for the District of Kentucky.

These respondents state that their co-defendants, Ballinger and R. P. Letcher, have been attending to this case, and they refer to their answers for a history of it; that they do this the more readily

because they are advised that the said Ballinger, at the instance of the said Letcher, gave his bond of indemnity to Randolph Adams, deceased, to hold him harmless for the Luke Tiernan debt, in consideration that the said Adams would release the benefit of the mortgage which he then held to secure him against the same debt, and other claims. Your respondent, James F. Ballinger, is advised that the said Adams, by operation of law, held the mortgage for the benefit of the other securities in the Tiernan debt, as well as himself, and that by parting with the indemnity which the mortgage afforded, which was ample, that he incurred the responsibility of the whole debt, without the right to contribution from his co-securities, your respondent, Ballinger, being one, who now pleads and relies upon this fact for his own exculpation, in addition to the facts set forth in the defence of his co-defendants, Frank Ballinger and R. P. Letcher.

Your respondents, Adams and Ballinger, make this their answer a cross-bill, against the said Letcher and Frank Ballinger, and pray that they may be compelled to answer the same, and save your respondents harmless from the effects of any decree which may be rendered.

And as in duty bound they will ever pray, &c.

LETCHER
for Respondents.

STATE OF KENTUCKY,
Knox County, ss:

This day personally appeared before the undersigned, an acting Justice of the Peace in and for said county, Richardson Adams and James F. Ballinger (the respondents in the foregoing answer), and made oath in due form of law, that the statements contained in said answer, as made upon their own knowledge, were true; and that those made upon the information of others, they believe to be true. Given under my hand this 21st day of March, 1849.

A. T. ANDERSON, *J. P.*

(*Order.*)

And afterwards, to wit, at the rules held in Clerk's Office, before the Clerk, on Monday the 2d day of July, 1849, came the defendant, Benjamin Eve, by his counsel, and filed his answer herein, which is as follows, to wit:—

(*Answer of Ben. Eve.*)

Answer of Benjamin Eve.

The answer of Benjamin Eve for himself, and as administrator of Jo. Eve, deceased, to a bill in Chancery, filed against him and others in the Federal Court for the District of Kentucky, by Robert Wickliffe.

This respondent says, for answer to said bill, that he denies in

the most unqualified manner, the charge of fraud, made by complainant in obtaining the decree perpetuating the injunction enjoining the judgments in the name of Tiernan & Son, against John G. Eve, Benj. Eve, Jo. Eve and R. Adams. He says the suit was prosecuted by the principal and the securities in good faith; in the first place, under a full belief that the debts or judgments were fully paid off; and secondly, under a well founded belief, as events have proved, that they, the securities, were released by the failure of the plaintiff in the judgments to prosecute their demands with diligence. These two points were made by the pleadings in the chancery cause, and were both fully sustained, as he verily believes, and the injunction perpetuated.

Farther answering he says, that he knows nothing of the indebtedness of any of the Tiernans to complainant, Wickliffe, and requires full proof thereof. He knows nothing of the insolvency of Charles Tiernan, or any fraudulent conduct ascribed to him; and so far as the same may affect his interest in this case, he requires full proof upon that subject also.

He refers to the answers of his co-defendants, Letcher and Frank Ballinger, and adopts them as his, so far as the facts are stated by them.

He relies and pleads the former adjudication in bar of this bill, and denies the right of complainant to question the decree. He says that he is in no way bound by anything done in the general court by complainant in his suits there; denies every allegation not herein admitted, traversed or denied, and prays to be hence dismissed, being allowed his reasonable costs.

BENJ. EVE.

STATE OF KENTUCKY KNOX COUNTY, to wit:—

This day, personally appeared before the undersigned, a Justice of the Peace in and for the county aforesaid, Benjamin Eve, and made oath that the statements set forth in the foregoing answers are true, so far as made of his own knowledge, and so far as made on the information on others, he believes them to be true.

Given under my hand this 23d day of May, 1849.

RICHARDSON ADAMS, *J. P.*

(*Order.*)

And afterwards, to wit, at rules in the Clerk's Office, before the Clerk, on Monday the 5th day of November, 1849 (until which time this cause was continued), came the complainant, and for replication to the answer of Franklin Ballinger, Thos. P. Letcher, Richard Adams, executor of Randolph Adams, and James F. Ballinger, says, that the answers, so far as they contradict the allegations of the bill, are untrue, and that the allegations of his bill are true.

Whereupon the complainant filed interrogatories herein—

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Which interrogatories are found *infra* prefixed to the depositions read in this cause.

And afterwards, to wit: at rules held in the Clerk's Office, before the Clerk, on Monday the 3d day of December, 1849, came R. Wickliffe, Esq., and filed his replication to the answer of defendants herein.

And afterwards, to wit: at rules held in the Clerk's Office, before the Clerk, on Monday the 6th day of October, A. D. 1851 (until which time this cause was continued in the rules).

(*Order set for Hearing.*)

Came R. Wickliffe, Esq., the complainant, and, on his motion, this cause is set for hearing.

And afterwards, to wit: at the October Term of the Court for the Circuit and District aforesaid, and on the 1st day of November, A. D. 1851, came the parties by their counsel, and, on their motion, this cause is continued until the next term of this court.

And afterwards, to wit: at the October Term of the Court aforesaid in the year 1852, and on the 21st day of October, came the complainant and, on his motion, leave is given him to prove upon the hearing of this cause, the following papers, to wit:—

(*Order.*)

1. Mortgage from Joseph Eve to Randolph Adams.
2. Joseph Eve's statement of accounts marked *A.*
3. Letter from Joseph Eve to Robert Wickliffe.
4. Copy of Luke Tiernan's will, upon proof of their execution, copies of said papers to be filed in said cause.

(*Order.*)

And afterwards, on a subsequent day of said term, to wit: the 23d day of October, A. D. 1852, came the parties by their counsel, and the complainant, by the oath of William H. Caperton, Esq., proved the calculation of Tiernan's debt, marked exhibit, and the letters from Eve to Wickliffe, dated December 1, 1842, to be respectively in the handwriting of the said Joseph Eve.

(*Order. Hearing.*)

And afterwards, on a subsequent day of said term, to wit: the 28th day of October, 1852, came the complainant in proper person, and the defendants, Benjamin Eve, administrator of Joseph Eve; Richardson Adams, executor of Randolph Adams; R. P. Letcher, James Ballinger, and Franklin Ballinger, by Ben. Monroe, Esq., their counsel; and this cause came on to be heard on the bill, answers, replication, exhibits, and proofs, but there not being time to go through with the same, time is given until to-morrow.

(*Order. Further hearing.*)

And, on the next day of said term, to wit: the 29th day of October, A. D. 1852, came again the complainant in proper person, and the defendants by Ben. Monroe, Esq., their counsel, and this cause was heard.

(*List of Papers Read.*)

These are the pleadings and proofs read and presented to the court by the counsel:—

1. The complainant read his bill, and the defendants then read the answer of Benjamin Eve in his own right and as administrator of Joseph Eve.

2. The answer of Franklin Ballinger.

3. The answer of Richardson Adams, executor of Randolph Adams.

4. The answer of Robert P. Letcher.

The complainant then read these documents:—

1. Copy of Luke Tiernan's will and letters of administration granted to complainant by Franklin County Court.

2. The record of this court, of the two suits at common law in the bills mentioned in the name of Tiernan & Sons against Eve, &c., together with the proceedings after judgment, including the entries in the execution books.

3. The record of this court of the suit in chancery in the name of Eve and others against Tiernan, mentioned in complainant's bill.

4. The petition of the complainant to be made a party to the above suit in chancery offered at the November Term, 1846, with the indorsement of the judge thereon, and the entries of the order made when said petition was offered.

5. The record of the motion made by complainants at November Term, 1847, for leave to file a bill of review.

6. The deposition of Charles Tiernan, together with these documents thereto attached; copy of indenture between Luke Tiernan and Charles Tiernan, with the certificates attached thereto; copy of the report of the Master in Chancery of the General Court of Kentucky; copy taken from Tiernan & Sons, ledger B.

7. Copy bill from Clerk's Office, General Court of Kentucky, in name of Wickliffe *vs.* Tiernan, &c. Complainant's own affidavits made and filed October 27, 1852.

8. A paper purporting to be a copy of the indenture between C. Tiernan and L. Tiernan.

9. Letters from Tiernan & Son to Wickliffe.

10. Letters from Joseph Eve to Wickliffe, dated February 7, 1835.

11. Copy letters from Joseph Eve to Wickliffe.

12. Statement of accounts made by Joseph Eve.

The defendants objected, when offered, to the reading of the deposition of Charles Tiernan, and of the above documents from No. 6 to No. 12, inclusive.

They had indorsed on the deposition before the hearing: "We object to the reading of the deposition of Charles Tiernan, because of his interest in the subject-matter of the suit," and before the hearing was commenced, mentioned their exception, when the question was reserved for decision upon the hearing. They now insisted on their exceptions, and objected that the above-mentioned were all incompetent. The papers were read subject to this exception.

13. Copy receipts from Wickliffe to Eve.
14. Complainant's own affidavit made and filed October 29, 1852.
15. Copy mortgage from Joseph Eve to Randolph Adams.

The cause was argued by counsel, but, the court not being sufficiently advised, took time, &c.

(*Decree.*)

And on the next day of said term, to wit: the 30th day of October, A. D. 1852, came again the complainants in proper person, and the defendants by Ben. Monroe, Esq., their counsel, and the court being now sufficiently advised, rendered the following decree herein. This decree was heard at a former day of this term, and argued by counsel; on consideration whereof—

It seems to the Court that Charles Tiernan was not a competent witness for the complainant, and that the report of the Master of the General Court of Kentucky referred to by him in his deposition is incompetent, and it is supposed several other documents, objected to by the defendants, are incompetent. But in the view the Court has taken of the cause, the presence or absence of these papers, or of the other proofs offered by the complainants and objected to by the defendants, is deemed unimportant, and they may all remain in the record that the complainant may have the benefit of his position in any review of the decree elsewhere.

It seems to the Court that the complainant cannot, with the present parties to his bill, and what is established in the cause by competent proof, have the decree of this Court in the cause of Benjamin Eve, John G. Eve, Randolph Adams and James F. Ballinger, against Charles Tiernan, in the bill mentioned, reviewed and annulled or modified.

And it is the opinion of the Court the complainant, a citizen of Kentucky, cannot maintain his bill against the defendants, citizens of the same State, as an original bill for relief against the defendants—the decree notwithstanding; and that there is moreover a defect of parties for this purpose, had the Court jurisdiction.

It is therefore decreed and ordered, that the complainant's bill be and the same is hereby dismissed, but without prejudice to any right he may be able to establish in any other suit.

The question whether the defendants are entitled to a decree for costs, is reserved for the present.

And on the motion of the complainant an appeal is granted to him to the Supreme Court of the United States, upon his executing bond as required by law, in the penalty of five hundred dollars, with William Preston his surety, in twenty days from the date hereof.

(*Decree Suspended.*)

And afterwards on a subsequent day of said term, to wit, the 1st day of November, 1852 :—

Ordered, that the decree and orders entered herein on Saturday last, be and the same are set aside and suspended until the further order of the Court.

(*Rehearing Ordered.*)

And afterwards, on a subsequent day of the same term, to wit, the 28th day of December, 1852 —

On motion of the complainant: It is ordered that this cause be reheard at the next term of this Court; and on the further motion of the complainant, he has leave to take testimony to prove the execution of an original paper, whereof a copy was offered on the hearing, entitled an Indenture between Luke Tiernan and Charles Tiernan; and to prove that Charles Tiernan, whose deposition was offered upon the hearing, was not interested in the event of the cause when his deposition was taken. Complainant has three months to take and file his proof. He shall take his depositions on interrogatories and not otherwise. He has leave to withdraw the will of Luke Tiernan and the copy of the Indenture between the Tiernans, upon leaving copies therof.

Complainant moved for leave to retake deposition of Charles Tiernan, but his motion is overruled.

And afterwards, to wit, on the 18th day of January, 1853, came the complainant into the Clerk's Office of the Court aforesaid, and filed interrogatories herein —

Which interrogatories will be found *infra*, prefixed to the deposition of Alexander Neil, Sr., &c.

(*Order. Hearing.*)

And afterwards at a Court held for the Circuit and District aforesaid, at the May term thereof, in the year 1853, and on the 27th day of May in said year, came the complainant in proper person, and the defendants by James Harlan and Ben. Monroe, Esq., their counsel, and this cause came on to be heard upon bill, answers, exhibits, and proofs, but there not being time to go through with the same, time is given until to-morrow.

(*Heard.*)

And on the next day of said term, to wit, the 28th day of May, 1853, came again the parties by their counsel, and this cause was fully heard; but the Court, not being sufficiently advised, took time, &c.

(*Decree.*)

And afterwards, to wit, on a subsequent day of said term, to wit, the 28th day of June, 1853, came again the complainant in proper person, and the defendants by Ben. Monroe, Esq., their counsel, and the Court being now sufficiently advised, rendered the following decree herein: This cause was heard at a former day of this term and argued by counsel; on consideration whereof, it still seems to the Court that Charles Tiernan, notwithstanding what has been read on the rehearing in support of his competency, was not a competent witness for the complainant, and that the report of the Master of the General Court of Kentucky, referred to by him in his deposition, is incompetent. And it is supposed that such is the case of several other documents objected to by defendants, but in the view the Court still has of the cause, the presence or absence of these papers, or of the other proofs offered by the complainant and objected to by the defendants, is deemed unimportant, and they may all remain in the record, that the complainant may have the benefit of his position in any review of the decree elsewhere.

It seems to the Court that the complainant cannot with the present parties to his bill, and what is in the cause by competent proof have the decree of this Court in the cause of Benjamin Eve, John G. Eve, Randolph Adams, and James F. Ballinger, against Charles Tiernan in the bill mentioned, reviewed and annulled or modified. And it is the opinion of the Court, that the complainant, a citizen of Kentucky, cannot maintain his bill against the defendants, citizens of the same State, as an original bill for relief against the defendants, the decree notwithstanding, and that there is moreover a defect of parties for this purpose, had the Court jurisdiction.

It is, therefore, decreed and ordered that the complainant's bill be and the same is hereby dismissed, but without prejudice to any rights he may be able to establish in any other suit.

(*Appeal Granted.*)

And thereupon came the complainant, and on his motion an appeal is granted to him to the Supreme Court of the United States, upon his executing bond, as required by law, in the penalty of five hundred dollars, with William Preston his surety, within twenty days from the date thereof.

The following are the proofs and exhibits read by the parties upon the hearing of this cause.

1. Copy of Luke Tiernan's will, and letters of administration.

(*L. Tiernan's Last Will and Testament.*)

In the name of God, amen: I, Luke Tiernan, of the city of Baltimore, being of a sound disposing mind, memory, and understanding, and being desirous to settle my worldly affairs, do therefore make and publish this my last will and testament, in manner and form following, that is to say: first and principally, I commit my soul into the hands of Almighty God, and my body to be deposited in my family vault, in the Catholic burial-ground, and it is my request that no mourning whatever be distributed or used at my funeral,

Item. I give and bequeath to my beloved wife, Ann Tiernan, during her life, the use and occupation of my dwelling-house and portion of grounds thereto attached, and now occupied by me on Charles Street, also the use of all my plate, household and kitchen furniture, with the provision and liquors that may be in the house at the time of my decease; and the sum of $2,000 annually, to be paid her by my executor, to be hereafter named, in quarterly payments during her life; to meet the payments of the said quarterly payments, I direct my executor to provide a fund to meet them out of such part of my estate as they, in their judgment, may believe to be most advisable.

Item. It is my will, and I do hereby authorize and empower my executors, the survivor or survivors of them, to sell and dispose of all my real and personal estate wheresoever situated, which I may die possessed of, and to execute deed or deeds to the purchaser for the same, and the manner, time, and terms of such sale is discretionary with my executors to select and determine on, except that part of my estate which is bequeathed to my dear wife, which is not to be disturbed during her life, and the proceeds of such sales are to be applied as follows: In the first instance to raise a fund to provide for the quarterly payments above referred to, the balance to the following legacies and distributions.

Item. I give and bequeath to my daughters, Maria Williamson and Rebecca Sommerville, each the sum of four thousand dollars.

Item. I give and bequeath to my daughter Catherine Chartard, the sum of $8,000.

Item. I give and bequeath to my son Charles Tiernan, in trust for his children, the sum of $4,000.

Item. I give and bequeath to my son William Tiernan, the sum of $6,000.

Item. I give and bequeath to my grandson, Luke Tiernan Brien, the sum of $7,000, to be paid to his guardian, hereafter named and appointed, with the express condition that the said guardian will only pay it over to his ward, on his said ward attaining the age of 25 years; and in the event of my said grandchild departing this life before he arrives at the age aforesaid, and without leaving issue legally begotten, then this legacy, and all his interest in my

estate, from this my will, shall be equally distributed amongst my two sons Charles and William, and my three daughters Maria Williamson, Rebecca Sommerville, and Catharine Chartard, share and share alike.

Item. It is my will, and I hereby direct my executors, after the payment of my debts, the aforegoing legacies and bequests, to distribute the balance of my estate equally amongst my two sons Charles and William, and my three daughters Maria Williamson, Rebecca Sommerville, and Catherine Chartard, and my grandson Luke Tiernan Brien, share and share alike.

Item. In the aforegoing legacies and bequests given to my children and my grandchild, it is my will in regard to the payment of them by my executors, that no priority or preference shall be given to any of them; that they must stand on an equality, and paid proportionably as the funds in the hands of my executors will justify, and in the event of any deficiency in my estate to meet them fully, then they must abate proportionably, and no interest to be allowed.

Item. My having at different times made advances to my children, it is my will that such advances shall not be brought against them or any of them, and that on no account shall the said advances be noticed by my executors in any form whatsoever.

Item. Being always desirous of obtaining satisfactory statements of the transactions of my agents, in which capacity my son Charles is now engaged in, in the South, a full and fair statement of his agency, I request my executors to require from him, and to pay over to them all moneys and assets of every kind, thereby to enable them to form a correct judgment, how and in what manner the business intrusted to him, as well as my late partner McCuddy, has been conducted.

In the event of my son Charles not complying with the request of my executors relative to his agency, then and in that case any interest given to him individually or to his children, in this my will, shall be void, and not to take effect, and his and their interest to be equally distributed among the remainder of my children.

Item. Being always desirous, during my life, to settle all my engagements in an amicable manner, and to avoid litigation, suits at law, or in chancery, it is my will that my executors in every instance that may occur where a suit at law or in chancery might be likely to be instituted against them, or that they might deem necessary for the benefit of my estate, to institute such suit, and to prevent litigation, I leave it entirely discretionary with them to have all disputes that may in any form occur in their duties as executors, to have them amicably adjusted by good and capable men by arbitrament.

I do hereby nominate, constitute, and appoint, my son-in-law Frederick Chartard, guardian to my grandson Luke Tiernan Brien.

I do hereby nominate, constitute, and appoint my friends Alexander Neil, of Hagerstown, T. Parker Scott, of the city of Balti-

more, and my grandson William Tiernan Sommerville, executors of this my last will and testament, revoking and annulling all former wills by me heretofore made, ratifying and confirming this and none other, as my last will and testament.

In witness whereof, I, the said Luke Tiernan, hath hereunto subscribed my name and affixed my seal, this 9th day of October, in the year of our Lord one thousand eight hundred and thirty-nine.

[SEAL.] LUKE TIERNAN.

Signed, sealed, published, and declared by Luke Tiernan, the above named testator, as and for his last will and testament, who, at his request, and in his presence, and in the presence of each other, have signed our names as witnesses thereto.

P. TIERNAN,
JAS. C. BARRY,
G. EMERY.

BALTIMORE COUNTY, SS:

On the 14th day of November, 1839, came Patrick Tiernan, James C. Barry, and Gideon Emery, the three subscribing witnesses to the aforegoing last will and testament of Luke Tiernan, late of said county, deceased, and made oath on the Holy Evangely of Almighty God, that they did see the testator sign and seal this will, that they heard him publicly pronounce and declare the same to be his last will and testament; that at the time of his so doing he was, to the best of their apprehension, of sound and disposing mind, memory, and understanding, and that they subscribed their names as witnesses to this will in his presence, at his request, and in the presence of each other.

Sworn to before the subscriber, Register of Wills for Baltimore County.

D. M. PERRINE.

Whereas, I, Luke Tiernan, of the City of Baltimore, have made and duly executed my last will and testament in writing, bearing date the 9th day of October, in the year 1839, which said last will and testament, and every clause, bequest, and devise therein contained I do hereby ratify and confirm, saving and excepting such clauses, bequests, and devises therein mentioned, as are by me hereinafter revoked and made void; and being desirous to alter some parts thereof, and of making additions thereto, do, therefore, hereby make this my codicil, which I will and direct shall be taken and held as a part of my said will and testament in manner and form following, that is to say: Whereas, I heretofore obtained a loan from the Merchants' Bank of Baltimore, of a large sum of money, and made a mortgage of divers portions of my real estate to secure the payment thereof, and amongst other parts of my real estate, of two lots of ground, with two three story brick dwelling houses erected thereon, situate,

lying, and being on the south side of Lexington Street, in the City of Baltimore, between Charles and Liberty Streets; and whereas, some time in the month of December, in the year 1837, I made a deed of the lots of ground and premises above mentioned, situate on Lexington Street, to my son-in-law, Frederick Chatard, subject, nevertheless, to the said deed of mortgage; and whereas, it was and is my intention that the said Frederick Chatard, should hold and enjoy the said lots of ground and premises free, clear, and discharged from all claims and incumbrances whatever, now I hereby declare, and my will is, that if the said Frederick Chatard, his heirs, executors, administrators, or assigns, or any of them, shall be hereafter called upon to make contribution towards the payment of the said mortgage debt or any other debt or debts of mine whatsoever, he the said Frederick Chatard, his heirs, executors, administrators, or assigns, or whosoever of them that may be required and may make such contribution, shall be fully indemnified and repaid the same, together with interest thereon, and all costs and charges, and the same is hereby made a charge upon my whole estate, both real and personal, whether the same be the subject of a special devise or bequest, or otherwise; in order that the said Frederick Chatard, his heirs and assigns, may hold and enjoy the said lots of ground and premises free, clear, and discharged from all incumbrances thereon. Having appointed three executors by my aforesaid will, I am now of opinion two will be most ample, and shall, therefore, dispense with Mr. Thomas Parker Scott, and wish the appointment rescinded and made void. Mr. Scott has a very large business of his own, and does not think he could attend to my business without material injury to his own.

In testimony whereof, I have hereunto set my hand and affixed my seal, this 4th day of November, in the year 1839.

[SEAL.] LUKE TIERNAN.

Signed, sealed, published, and declared by Luke Tiernan, the testator, as and for a codicil to his last will and testament in the presence of us, who, at his request, in the presence of us, and in presence of each other, have subscribed our names as witnesses thereto.

Witnesses present, P. TIERNAN.
JAS. C. BARRY,
JAMES MOTT.

BALTIMORE COUNTY, SS:

On the 14th day of November, 1839, came Patrick Tiernan, James C. Barry, and James Mott, the three subscribing witnesses to the aforegoing codicil to the last will and testament of Luke Tiernan, late of said county, deceased, and made oath on the Holy Evangely of Almighty God, that they did see the testator sign and seal this

codicil; that they heard him publish, pronounce, and declare the same to be a codicil to his last will and testament; that at the time of his so doing he was, to the best of their apprehension, of sound and disposing mind, memory, and understanding, and that they subscribed their names as witnesses to this codicil in his presence, at his request and in the presence of each other.

Sworn to before the subscriber, Register of Wills for Baltimore County.

D. M. PERRINE.

(*Luke Tiernan's Estate—Renunciation of Ann Tiernan.*)

I, Ann Tiernan, widow of Luke Tiernan, late of Baltimore County, deceased, do hereby renounce and quit all claim to any bequest or devise made to me by the last will of my husband exhibited and proved according to law, and I elect to take in lieu thereof, my dower or legal share of the estate of my said husband.

In testimony whereof, I hereunto subscribe my name and affix my seal, this 17th day of April, 1840.

[SEAL.] ANN TIERNAN.

Witness,
P. TIERNAN.

Received to be recorded on the 13th day of April, 1840; same day filed and recorded, and examined.

Teste: D. M. PERRINE,
Register of Wills for Baltimore County.

In testimony that the foregoing is a true copy, taken from Wills Liber D. M. P., No. 17, folio 409, and being one of the records in the office of the Register of Wills for Baltimore County, I hereunto subscribe my name, and affix the seal of my office, this 27th day of May, in the year of our Lord 1846.

[L. S.] Teste: D. M. PERRINE,
Register of Wills for Baltimore County.

MARYLAND, SCT:

I, Edward D. Kemp, Presiding Justice of the Orphans' Court for Baltimore County, in the State aforesaid, do certify that the aforegoing attestation of David M. Perrine, Register of Wills for said County, is in due form, and by the proper officer.

Given from under my hand at the City of Baltimore, this 28th day of May, in the year of our Lord 1846.

E. D. KEMP.

MARYLAND, SCT:

I hereby certify that Edward D. Kemp, Esquire, who has signed the aforegoing certificate, was, at the time of so doing, the Presiding

1704.

Justice of the Orphans' Court for Baltimore County, duly commissioned and qualified according to law.

In testimony whereof, I hereunto subscribe my name, and affix the seal of said Orphans' Court, this 28th day of May, in the year of our Lord 1846.

[L. S.] Teste: D. M. PERRINE,
Register.

STATE OF KENTUCKY, SCT:

At a county court held for the County of Franklin, at the Courthouse in the town of Frankfort, on Monday, the 15th day of June, 1846, a copy of the last will and testament of Luke Tiernan, dec'd, was produced in court, and the same, together with the testimonials indorsed, are ordered to be recorded.

Whereupon, the same is duly recorded in my office.

A. H. RENNICK,
C. F. C. C.

FRANKLIN COUNTY, SCT:

May Term, 1846. (*May* 19, 1846.)

This day, Robert Wickliffe, who represents that he is a creditor of the estate of Luke Tiernan, dec'd, late of the State of Maryland, appeared in court, and moved the court to grant unto him administration of the estate of said Tiernan; and James Harlan, on behalf of the executors of the last will and testament of said deceased, and opposed said motion; and, the evidence and arguments being heard, and the court sufficiently advised—

It is ordered that administration of the estate of the said Luke Tiernan, dec'd, be granted to said Wickliffe; but the said Wickliffe afterwards declined (for the present) to take the oath and give bond as required by law.

It is ordered that his motion be continued, and the whole matter is left open, and the further consideration thereof is indefinitely postponed.

FRANKLIN COUNTY COURT, SCT:

June Term, 1846. (*June* 15, 1846.)

On motion of Robert Wickliffe, administration of all and singular the goods and chattels, rights and credits of Luke Tiernan, dec'd, with the will annexed, is granted him.

Whereupon he took the oath, entered into and acknowledged bond with Preston S. Loughborough, his security, in the penal sum of two thousand dollars, conditioned according to law.

STATE OF KENTUCKY, SCT:

I, Alexander H. Rennick, Clerk of the County Court for the County of Franklin, do certify the foregoing ten pages contains a full, true, and complete copy of the last will and testament of Luke Tiernan, dec'd, with the orders of court touching the same, as the same remains of record in my said office.

Witness my hand, as Clerk, as aforesaid, this twenty-sixth day of October, 1852.

A. H. RENNICK,
Clerk Franklin County Court.

Copy Record. Luke Tiernan & Sons vs. *John G. Eve, &c.*

No. 2.

L. TIERNAN & SONS
vs.
JOHN G. EVE, &c. } Copy record.

Pleas before the Honorable John M'Lean and John Boyle, Judges of the Seventh Circuit Court of the United States of America, in, and for the Kentucky District, held at the capitol, in the town of Frankfort, at the November term of said court, in the year 1833.

LUKE TIERNAN & SONS, Plaintiffs,
vs.
JOHN G. EVE and others, Defendants. } In debt.

Be it remembered that heretofore, to wit, on the 21st of August, 1833, came Luke Tiernan & Sons, by their attorney, into the Clerk's Office of the court aforesaid, and filed the following declaration, to wit:—

UNITED STATES OF AMERICA,
Seventh Circuit, Kentucky District.

Luke Tiernan, Charles Tiernan, and David Williamson, citizens of the State of Maryland, and trading under the firm, style, and denomination of Luke Tiernan & Sons, complain of John G. Eve, Joseph Eve, Benjamin Eve, Randolph Adams, and James Ballinger, citizens of the commonwealth of Kentucky, and surviving obligors of John G. Eve, Joseph Eve, Benjamin Eve, and Wesley M. Garnet, Randolph Adams, and James Ballinger, in custody, &c. of a plea that the defendants render unto the said plaintiffs the sum of thirteen hundred and eight dollars and forty-four cents, which to them they owe, and from them unjustly detain. For that, whereas, heretofore to wit, on the eighteenth day of April, 1822, at Barboursville, in the circuit and district aforesaid, the defendants executed their certain writing obligatory, signed with their proper names, and sealed with their seals, the date whereof is the day and year last aforesaid, and now here produced, and to the court shown

1705

therein, and thereby jointly and severally binding themselves and their heirs on or before the first day of December then next ensuing, to pay to the order of the plaintiffs in Baltimore, in current money of the United States, the full and just sum of thirteen hundred and eight dollars and forty-four cents, for value received. Yet the said defendants (although often requested so to do) hath not as yet paid the said sum of thirteen hundred and eight dollars and forty-four cents, above demanded, or any part thereof, to the said plaintiffs, but have hitherto wholly neglected and refused so to do, to the damage of the said plaintiffs of thirteen thousand dollars, and therefore they bring their suit, &c.

WICKLIFFE & WOOLLEY,
P. Q.

The following is a copy of the note sued on in the foregoing declaration.

BARBOURSVILLE, KNOX COUNTY, KY., 18*th April*, 1822.

On or before the first day of December next, we jointly and severally bind ourselves, our heirs, &c., to pay to the order of Luke Tiernan & Sons, in Baltimore, in current money of the United States, the full and just sum of thirteen hundred and eight dollars and forty-four cents, for value received, as witness our hands and seals this eighteenth day of April, 1822.

JOHN G. EVE, by [SEAL.]
JOSEPH EVE, [SEAL.]
BEN. EVE,
JOSEPH EVE, [SEAL.]
WESLEY M. GARNET, [SEAL.]
RAN. ADAMS, [SEAL.]
JAMES T. BALLINGER, [SEAL.]

$1,308 $\frac{44}{100}$

SCHROEDER,
Witness.

Upon the foregoing declaration, issued the following writ, to wit:—

[L. S.] The United States of America, to the Marshal of the Kentucky District, greeting:—

You are hereby commanded to take John G. Eve, Joseph Eve, Benjamin Eve, Randolph Adams, and James Ballinger, citizens of the Commonwealth of Kentucky, and surviving obligors of John G. Eve, Joseph Eve, Benjamin Eve, Wesley M. Garnet, Randolph Adams, and James Ballinger, if they be found within your bailiwick, and them safely keep so that you have their bodies before the Judges of our Seventh Circuit of the United States of America, in and for the District of Kentucky, at the Capitol in Frankfort, on the first Monday in November next, to answer Luke Tiernan,

Charles Tiernan, and David Williamson, citizens of the State of Maryland, and trading under the firm, style, and denomination of Luke Tiernan & Sons, of a plea of debt for thirteen hundred and eight dollars and forty-four cents damage $13,000, and have then there this suit.

In testimony whereof, John Marshall, Esq., Chief Justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed this 21st day of August, A. D. 1833, and in the 58th year of our independence.

Attest, JOHN H. HANNA,
C. C. C., K. D.

Memorandum: This is an action of debt, and no bail is required.
WOOLLEY,
P. Q.

Marshal's Return: Executed on John G. Eve, R. Adams, and James Ballinger, at Barboursville, on the 11th September; on Jos. Eve, on the 12th at Mt. Vernon, and on John G. Eve, at Lexington, on the 14th.

ANDREW J. McCALLA,
D. M. K. D.

And afterwards, to wit: At the November Term, 1833, came the plaintiffs aforesaid by their attorney, and it appearing to the court that the capias has been duly served on the defendants, and they failing to appear and plead to the plaintiffs' said action, though solemnly called; it is, therefore, considered by the court that the plaintiffs recover of the defendants the debt in the declaration mentioned, being thirteen hundred and eight dollars and forty-four cents, with interest thereon at the rate of six per centum per annum from the first day of December, 1822, until paid, and also their costs herein expended.

Upon the foregoing judgment the following executions issued, to wit:—

(*Extract of Execution.*)

Fi. Fa. No. 6837.

Luke Tiernan, Charles Tiernan, and David Williamson, trading under the style of Luke Tiernan & Sons, against John G. Eve, Joseph Eve, Benjamin Eve, and Randolph Adams, and James Ballinger, for debt $1,308$\frac{44}{00}$, with interest thereon at the rate of six per centum per annum from the first day of December, 1822, until paid. Costs $29 84.

Execution of *fieri facias* issued December, 1833, returnable to February rules. Ordered by Woolley and delivered to Woolley.

Not returned to the office.

(*Extract from Execution Book.*)

Fi. Fa. No. 7579.

Luke Tiernan, Charles Tiernan, and David Williamson, trading under the firm of Luke Tiernan & Sons against John G. Eve, Joseph Eve, Benjamin Eve, Randolph Adams, and James Ballinger, for debt $1,304$\frac{44}{100}$, with interest thereon at the rate of six per centum per annum, from the first day of December, 1822, until paid. Costs $30 90.

Execution of *Fieri Facias* issued 13th May, 1837, returnable to August rules. Ordered by Wickliffe, and delivered to Wickliffe.

Not returned to the office.

(*Extract from Execution Book.*)

Fi. Fa. No. 7662.

Luke Tiernan, Charles Tiernan, and David Williamson, trading under the firm of Luke Tiernan & Sons against John G. Eve, Joseph Eve, Benjamin Eve, Randolph Adams, and James Ballinger, for debt $1,308$\frac{44}{100}$, with interest thereon at the rate of six per centum per annum from the first day of December, 1822, until paid. Costs $31 96.

Execution of *fieri facias* issued May 12th, 1838; returnable to July rules.

Ordered by Wickliffe, and delivered to Wickliffe.

Not returned to the office.

(*Extract from Execution Book.*)

Fi. Fa. No. 8088.

Charles Tiernan and David Williamson, surviving partners of Luke Tiernan against *John G. Eve*, Joseph Eve, Benjamin Eve, and Randolph Adams, for debt $1,308$\frac{44}{100}$, with interest thereon, at the rate of six per centum per annum from the first day of December, 1822, until paid. Costs 33\frac{02}{100}$.

Execution of *fieri facias* issued August 17, 1842; returnable to November rules.

Ordered by R. Wickliffe, and sent to Wickliffe by mail.

Not returned to the office.

Fi. Fa. No. 8307.

[L. S.] The United States of America, to the Marshal of Kentucky District, greeting:—

You are hereby commanded, that of the estate of *John G. Eve*, Benjamin Eve, Randolph Adams, and James Ballinger, surviving co-obligors with *John G. Eve* and Wesley M. Garnet, deceased, you cause to be made the sum of one thousand three hundred and eight dollars and forty-four cents, with interest thereon at the rate of six per centum per annum, from the first day of December, 1822,

until paid, which lately in our Eighth Circuit Court of the United States of America in the District of Kentucky, Charles Tiernan and David Williamson, surviving partners of Luke Tiernan, late partners, trading under the firm of Luke Tiernan & Sons, have recovered against them for debt; also thirty-three dollars and two cents, which was adjudged to the said Tiernan and Williamson, for their costs by them in that behalf expended; whereof the said Eve, Adams, &c. are convict as appears to us of record; and that you have the same before the Judges of our Eighth Circuit Court of the United States of America in the District of Kentucky, at Frankfort, on the first Monday in March next, to render unto the said Tiernan & Williamson the debt and costs aforesaid; and have then there this writ: In testimony whereof, Roger B. Taney, Esq., Chief Justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, this 15th day of December, A. D. 1845, and in the 70th year of our independence.

Attest, JNO. H. HANNA,
C. C. C., K. D.

This execution is entitled to the following credits, as per receipt filed.

1834, Feb'y 13, p'd	Wickliffe & Woolley, . . .	$600
1835, Feb'y 5, "	" " . . .	500
1835, July 15, "	" " . . .	500
1836, Feb'y 16, "	E. K. Sayre for Wickliffe, . .	110
		$1710

Att. JNO. H. HANNA,
C. C. C., K. D.

Came to my hand, December 17th, 1845, at 10 o'clock A. M.
G. H. JETT, *D. M.*

Stayed by order of injunction, this 17 Feb'y, 1846.
G. M. JETT,
D. M., for
JNO. LANE,
M. K. D.

UNITED STATES OF AMERICA,
8th Circuit & Kentucky District, sct.

I, John A. Monroe, Clerk of the Circuit Court of the United States for the circuit and district aforesaid, certify that the foregoing contains a true transcript of the record of the suit named in the caption, including the executions issued in said suit, and the

extracts from the execution books in my office. Given under my hand, this 19 January, 1853.

JOHN A. MONROE,
C. C. C., K. D.

Copy Record Luke Tiernan & Sons against *John G. Eve & Others.*

2.

L. TIERNAN & SONS
vs.
JOHN G. EVE, &c. } Copy Record.

Pleas before the Honorable John McLean and John Boyle, Judges of the Seventh Circuit Court of the United States of America in and for the Kentucky District, held at the capitol, in the town of Frankfort, at the November Term of said Court in the year 1833.

LUKE TIERNAN & SONS, Plaintiffs,
vs.
JOHN G. EVE & others, Defendants. } In Debt.

Be it remembered, that heretofore, to wit, on the 21st of August, 1833, came Luke Tiernan, Charles Tiernan, and David Williamson, by their attorney, into the Clerk's Office of the court aforesaid, and filed the following declaration, to wit:—

UNITED STATES OF AMERICA,
Seventh Circuit, Kentucky District, sct.

Luke Tiernan, Charles Tiernan, and David Williamson, citizens of the State of Maryland, trading under the firm, style, and denomination of Luke Tiernan & Sons, complain of John G. Eve, Joseph Eve, Benjamin Eve, Randolph Adams, and James Ballinger, surviving obligors of John G. Eve, Joseph Eve, Benjamin Eve, Wesley M. Garnett, Randolph Adams, and James Ballinger, citizens of the Commonwealth of Kentucky, in custody, &c. of a plea that the said defendants render unto the said plaintiffs the sum of thirteen hundred and eighty-three dollars and ninety-five cents, which to them they owe, and from them unjustly detain. For that, whereas, heretofore, to wit, on the eighteenth day of April, eighteen hundred and twenty-two, at Barboursville, in the county of Knox, in the circuit and district aforesaid, the defendants executed their certain writing obligatory, signed with their proper names, and sealed with their seals, the date whereof is the day and the year last aforesaid, now here produced and to the court shown, and therein and thereby jointly and severally bound themselves and their heirs to pay, on or before the first day of December, eighteen hundred and twenty-three, to the order of the plaintiffs, in Baltimore, in current money of the United States, the full and just sum of thirteen hundred and eighty-three dollars and ninety five cents, for value re-

ceived. Yet the same defendants (although often requested so to do) have not as yet paid the said sum of thirteen hundred and eighty-three dollars and ninety-five cents, above demanded, or any part thereof, to the said plaintiff, but have hitherto wholly neglected and refused, and still neglect and refuse so to do; to the damage of the said plaintiffs of fourteen thousand dollars; and therefore they bring their suit, &c.

WICKLIFFE & WOOLLEY,
P. Q.

The following is the note sued on in the foregoing declaration, to wit:—

BARBOURSVILLE, KNOX COUNTY, KY., 18*th April*, 1822.

On or before the first day of December, in the year of our Lord one thousand eight hundred and twenty-three, we jointly and severally bind ourselves, our heirs, &c., to pay to the order of Luke Tiernan & Sons, in Baltimore, in current money of the United States, the full and just sum of thirteen hundred and eighty-three dollars and ninety-five cents, for value received. As witness our hands and seals the day above written.

$1383 $\frac{95}{100}$

JOHN G. EVE, by [SEAL.]
JOSEPH EVE,
JOSEPH EVE, [SEAL.]
BENJAMIN EVE, [SEAL.]
WESLEY M. GARNETT, [SEAL.]
RAN. ADAMS, [SEAL.]
JAMES F. BALLINGER, [SEAL.]

Witness,
CHARLES SCHROEDER.

Upon which declaration issued the following writ, to wit:—

[L. S.] The United States of America to the Marshal of the Kentucky District, greeting:—

You are hereby commanded to take John G. Eve, Joseph Eve, Benjamin Eve, Randolph Adams, and James Ballinger, surviving obligors of John G. Eve, Benjamin Eve, Joseph Eve, Wesley M. Garnett, Randolph Adams, and James Ballinger, citizens of the Commonwealth of Kentucky, if they be found within your bailiwick, and them safely keep so that you have their bodies before the judges of our Seventh Circuit Court of the United States of America in and for the District of Kentucky, at the capitol, in Frankfort, on the first Monday in November next, to answer Luke Tiernan, Charles Tiernan, and David Williamson, citizens of the State of Maryland, trading under the firm, style, and denomination of Luke Tiernan & Sons, of a plea of debt for thirteen hundred and eighty-three dollars and ninety-five cents, damage $14,000, and have then

there this writ. In testimony whereof, John Marshall, Esq., Chief Justice of the Supreme Court of the United States of America, hath caused the seal of our said Court to be hereunto affixed, this 21st day of August, A. D. 1833, and in the 58th year of our Independence.

Attest, JNO. H. HANNA,
C. C. C., K. D.

Memorandum: This is an action of debt, and no bail is required.
WOOLLEY,
P. Q.

Marshal's Return: Executed on John G. Eve, and R. Adams, and James Ballinger, at Barboursville, on the 11th September; on Joseph Eve on the 12th, at Mount Vernon, and on John G. Eve on the 14th Sept. 1833.

ANDREW J. McCALLA,
D. M. K. D.

And afterwards, to wit: at the November Term, in the year 1833, came the plaintiffs aforesaid, by their attorney; and it appearing to the court that the capias has been duly served on the defendants, and they failing to appear and plead to the plaintiffs' said action, though solemnly called: it is therefore considered by the court that the plaintiffs recover of the defendants the debt in the declaration mentioned, being thirteen hundred and eighty-three dollars and ninety-five cents, with interest thereon at the rate of six per centum, *per centum*, per annum, from the 1st day of December, 1823, until paid, and also their costs herein expended.

The following executions issued on the foregoing judgment.

Extract from Execution Book.

(*Fi. Fa.* No. 6,837.)

Luke Tiernan, Charles Tiern, David Williamson, trading under the firm of Luke Tiernan & Sons, *against* John G. Eve, Joseph Eve, Benjamin Eve, Randolph Adams, and James Ballinger.

Execution of *fieri facias* for debt, $1,383 $\frac{95}{100}$, with interest thereon, at the rate of six per centum per annum from the first day of December, 1823, until paid. Costs, $29 84.

Issued, December 4, 1833; returnable to February rules, 1834; sent to Woolley by mail; not returned to office.

Execution. No. 7578.

(*Fi. Fa.* No. 7578.)

[L. S.] The United States of America to the Marshal of the Kentucky District, greeting:—

You are hereby commanded that of the estate of John G. Eve,

Joseph Eve, Benjamin Eve, Randolph Adams, and James Ballinger, you cause to be made the sum of one thousand three hundred and eighty-three dollars and ninety-five cents, with interest thereon at the rate of six per centum per annum from the first day of December, 1823, until paid, which lately in our 7th Circuit Court of the United States of America in the District of Kentucky, Luke Tiernan, Charles Tiernan, and David Williamson, trading under the firm of Luke Tiernan & Sons, have recovered against them for debt; also thirty dollars ninety cents, which was adjudged to the said Luke Tiernan, &c., for their costs by them in that behalf expended: whereof the said John G. Eve, &c. are convict, as appears to us of record: and that you have the same before the Judges of our said 7th Circuit Court of the United States of America in the District of Kentucky, at Frankfort, on the first Monday in August next, to render unto the said Luke Tiernan, &c. the debt and costs aforesaid: and have then there this writ.

In testimony whereof, Roger B. Taney, Esq., Chief Justice of the Supreme Court of the United States of America, hath caused the seal of our said Court to be hereunto affixed this 13th day of May, A. D. 1837, and in the 61st year of our independence.

Attest: JNO. H. HANNA,
C. C. C., K. D.

Indorsed "Not acted on."

Execution. No. 7661. *Extract.*

(*Fi. Fa.* No. 7661.)

Luke Tiernan, Charles Tiernan, and David Williamson, trading under the firm of Luke Tiernan & Sons, *against* John G. Eve, Joseph Eve, Benjamin Eve, Randolph Adams, and James Ballinger.

Execution of *fieri facias* for debt. Thirteen hundred and eighty-three dollars, ninety-five cents, with interest thereon at the rate of six per centum per annum, from the first day of December, 1823, until paid. Costs, $31 97.

Issued 12th May, 1838; returnable to July rules. Ordered by Wickliffe and delivered to Wickliffe; not returned to the office.

Execution. No. 8306.

(*Fi. Fa.* 8306.)

[L. S.] The United States of America to the Marshal of the Kentucky District, greeting:—

You are hereby commanded that of the estate of John G. Eve, Benjamin Eve, Randolph Adams, and James Ballinger, surviving co-obligors with John G. Eve and Wesley M. Garnett, dec'd, you cause to be made the sum of one thousand three hundred and eighty-three dollars and ninety-five cents, with interest thereon at

the rate of six per centum per annum, from the first day of December, 1823, until paid, which lately in our Eighth Circuit Court of the United States of America in the District of Kentucky, Charles Tiernan and David Williamson, surviving partners of Luke Tiernan, late partners, trading under the firm of Luke Tiernan & Sons, have recovered against them for debt. Also, thirty-three dollars and three cents, which was adjudged to the said Tiernan and Williamson for their costs by them in that behalf expended; whereof the said Eves, Adams, &c. are convict, as appears to us of record; and that you have the same before the Judges of our said Eighth Circuit Court of the United States of America in the District of Kentucky, at Frankfort, on the first Monday in March next, to render unto the said Tiernan & Williamson the debt and costs aforesaid: and have then and there this writ.

In testimony whereof, Roger B. Taney, Esq., Chief Justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, this 15th December, A. D. 1845, and in the 70th year of our independence.

Attest: JOHN H. HANNA,
C. C. C., K. D.

Indorsement: This execution is entitled to the following credits, as per receipts filed:—

1825, June 17, paid Leavy & Sons . . .	$250 00
1827, Feb. 20, paid Leavy & Sons . . .	500 00
1829, Jan. 26, paid Leavy & Sons . . .	500 00
1830, Mar. 20, paid Leavy & Sons . . .	500 00
	$1,750 00

Attest: JNO. H. HANNA,
C. C. C., K. D.

Marshal's Return.—Came to my hands December 17th, 1845, at 10 o'clock A. M.

G. H. JETT,
Deputy Marshal.

Stayed by order of injunction, this 17th Feb. 1846.

G. H. JETT,
Deputy Marshal,

for JNO. LANE,
Marshal K. D.

UNITED STATES OF AMERICA,
8th Circuit and Kentucky District, sct:

I, John A. Monroe, Clerk of the Court for the Circuit and District aforesaid, certify that the foregoing contains a true transcript

of the record and proceedings had in the suit in the caption named, including the executions issued in said suit, and extracts from the execution books in my office.

Given under my hand this 19th January, A. D. 1853.

JOHN A. MONROE,
C. C. C., K. D.

No. 3. Copy Record. Suit in Chancery of John G. Eve, against Tiernan and Williamson.

JNO. G. EVE, &c.
vs.
TIERNAN.
} Copy Record.

Pleas before the Hon. Thomas B. Monroe, one of the Judges of the Eighth Circuit Court of the United States in and for the Kentucky District, at the Capitol in Frankfort, at the May term thereof, A. D. 1847.

JOHN G. EVE and others, Compl'ts.
vs.
CHARLES TIERNAN, &c., Deft's.
} In Chancery.

Be it remembered, that heretofore, to wit, on the 14th day of February, 1846, came Benjamin Eve, John G. Eve, Randolph Adams, and James Ballinger, by Monroe and Letcher, their counsel, and filed in the Clerk's Office of the court aforesaid, the following bill of complaint, to wit:—

(*Bill.*)

To the Judges of the Circuit Court of the United States for the Kentucky District.

Benjamin Eve, John G. Eve, Randolph Adams, and James F. Ballinger, citizens of the State of Kentucky, bring this bill against Charles Tiernan and David Williamson, citizens of the State of Maryland, surviving partners of the late firm of Luke Tiernan & Sons, citizens and residents of the State last aforesaid, and merchants; and thereupon your orators complain and say, that on the day of 18 they, as the sureties of one Joseph Eve, now deceased, did execute with said Eve, two notes to the said Luke Tiernan & Sons, one for the sum of $1,308 44, with interest from the 1st day of December, 1822, the other for the sum of $1,383 95, with interest from the 1st day of December, 1823; that said notes were placed in the hands of one William Leavy & Son, of Lexington, Ky., for collection, as the friends and agents of said Tiernan & Son; that said Joseph Eve, their principal, made sundry payments to said Leavy & Son, for which he took the receipts of said Leavy & Son, amounting together to the sum of $1,750, which fully paid off the same note for $1,308 44, except perhaps 10 or 12 dollars, which payments afore-

said were all made before any suit brought on either of said notes; that afterwards, said notes were placed in the hands of Robert Wickliffe and Aaron K. Woolley, attorneys-at-law, of Lexington, Ky., who were practising as partners for collection, after which the said Joseph Eve proceeded to make payments in discharge of said two notes to said Wickliffe and Woolley, and to take receipts for a part of said payments. The complainants here file receipts of said Wickliffe and Woolley, and one given by E. K. Sayre (which was given by said Sayre as their clerk and agent), for $110, for payments made on the note bearing interest from 1823, to the amount of $1,710, which receipts of Wickliffe and Woolley, and that given by their agent Sayre, and also the receipts of William Leavy & Son, they file and exhibit as part of this bill.

They further state, that in the year 1833, said Wickliffe and Woolley as attorneys-at-law, commenced suits at law on the two notes aforesaid, in the Circuit Court of the United States for the Kentucky District, and at the November Term of said Court, 1833, judgment for the full amount of said two notes were rendered against the said Joseph Eve and these complainants by default, no defence whatever being made to said suit. These complainants had the fullest confidence in their principal, that he would so meet and pay, or otherwise arrange the said demands, as to save them from injury or loss.

They are informed and believe it to be true, that after the said suits were commenced, said Joe Eve had an interview with Aaron K. Woolley, and produced to *them* his receipts for payments made upon the note bearing interest from 1822, and remonstrated with him upon the injustice of suing upon the first note aforesaid, which was discharged, except the 10 or 12 dollars aforesaid. When said Woolley agreed to have no judgment entered upon said note for $1,308 44, if the said Eve would make no defence, nor file any plea to the jurisdiction of the court; and under that agreement and understanding, said Eve did not rely upon his receipts, or make any defence to the suits aforesaid. But greatly to the surprise of said Eve and these complainants, said Woolley, as they are disposed to believe through forgetfulness, violated his agreement with Eve and took judgment on both said notes, without giving any credit for payment upon either; and they further allege, that said Eve, in the month of August, 1835, as they are informed and believe and charge to be true, paid or caused to be paid to Robert Wickliffe and A. K. Woolley, or one of them, a further sum of $500, upon the said two judgments, which fully paid off the note of $1,308 45, and also the whole of the judgment and costs on the note for $1,383 95. They are not able to state whether any receipt was given for the payment of $500, or not; they are not able to find any, but they hope to be able to prove the fact by satisfactory evidence.

They state that they are merely sureties, and having great confi-

dence in the integrity of their principal, they were less particular in giving attention to the state of facts in relation to the situation of the demands aforesaid, and from the great lapse of time since the judgments was obtained, they presumed that it had been satisfactorily arranged, paid off, and your orators exonerated, until recently, to their surprise, they learned that Robert Wickliffe had ordered out execution upon the aforesaid two judgments of November, 1833, and will, as they verily believe and charge, place the same in the hands of the proper officer of this court for collection, off your orators.

They charge the fact to be, that for a long time after the judgments aforesaid, said Joseph Eve had ample means to pay said debts, and out of which the sum could be made if they had not been paid, and they rely upon this circumstance as affording a strong presumption, and which, added to the lapse of time and the proofs which they expect to be able to adduce, will be full and satisfactory of the fact, that said two judgments have been fully paid off, or if not fully paid off, that any balance is not equal to the costs of suit on the $1,308 44 note, which they insist they should not pay.

These complainants state further that, after the judgments aforesaid, in 1833, no execution was issued upon them or either of them, and placed in the hands of a proper officer for collection, and, if any did issue, it never was so placed in the hands of an officer. They, therefore, rely upon the statute in such cases made and provided, and insist that they, as sureties, are discharged from liability on the judgments aforesaid, as no execution within the spirit and meaning of the statute issued for seven years after the judgments aforesaid, which they aver to be the fact.

These complainants further show that said Robert Wickliffe, as they are informed and believe to be true, before the issual of the executions upon the judgments against your orators, had filed his bill in the General Court of Kentucky against the said Charles Tiernan and David Williamson; and your complainants, praying an injunction restraining the said Tiernan and Williamson from collecting, and your orators from paying the judgments aforesaid to said Tiernan and Williamson, and actually obtained such injunction, which is still in full force, whilst the same Wickliffe is trying to compel these complainants to pay said judgments in violation of an injunction granted at his own instance; and yet, in full force, they file herewith a copy of his bill, and amended bill, and process, and injunction as part of this bill. They also make the papers and record in the common law suits of Tiernan and Sons against them parts hereof. The complainants allege that they do not know whether the said Wickliffe has any authority to control the said executions which have issued, or had any authority to order its issual, and they require that the defendants answer specifically to that point, as they are informed and believe that it issued without their direction, and contrary to their instructions.

The complainants pray process against said Charles Tiernan and David Williamson, and an injunction enjoining and restraining the said defendants from proceeding further upon said executions directed, &c., and upon final hearing, that the same may be made perpetual, and such other relief in the premises as may be consistent with equity and will pray, &c.

MONROE & LETCHER,
for Complainants.

STATE OF KENTUCKY,
Knox County, sct.

This day Ran. Adams, James F. Ballinger, and Benjamin Eve appeared before me, a Justice of the Peace for the county aforesaid, and made oath that the facts stated in this bill, of their own knowledge, is true, and what is stated from information they believe to be true. Witness my hand this 20th day of December, 1845.

SAM'L F. MILLER, *J. P.*

We do hereby release all errors in the judgments at law hereby prayed to be enjoined. Witness our hands and seals this 20th day of December, 1845.

RAN. ADAMS, [SEAL.]
BENJAMIN EVE, [SEAL.]
JAMES F. BALLINGER, [SEAL.]

The following is the order for injunction indorsed on the bill of complainant, to wit:—

Application for injunction heard according to notice on the 7th of February, 1846, and time take, &c.

MONROE.

(*Order for Injunction.*)

U. S. DISTRICT OF KENTUCKY, *February* 13, 1846.

BENJAMIN EVE and others,
vs.
CHARLES TIERNAN & DAVID WILLIAMSON.

On the filing of the above bill and the execution of a bond to the complainants in the penalty of six thousand dollars by R. P. Letcher, as surety, with condition that, if the injunction awarded shall be dissolved, having been wrongfully obtained, then the complainants shall pay to the defendants the amount of the judgments at law enjoined, and all the damages and costs which shall be awarded against them in this case. Let a writ issue enjoining the defendants, their attorneys, and all others acting by their authority or in their names from all proceedings on the two judgments at law in the bill

mentioned by process of execution, or otherwise for the enforcement thereof, until the matters of the complainants' bill shall be finally heard in equity, or this injunction shall be otherwise terminated.

THO'S B. MONROE,
J. U. S., K. D.

To THE CLERK, C. C. U. S., K. D.

Whereupon the following subpoena, with injunction indorsed, was issued, to wit:—

(*S'poe in Ch'y.*)

[L. S.] The United States of America to the Marshal of the Kentucky District, greeting:

You are hereby commanded to summon Charles Tiernan and David Williamson, surviving partners of the late firm of Luke Tiernan & Son, to appear before the Judge of our Eighth Circuit Court of the United States of America in and for the District of Kentucky, at the capitol in Frankfort, on the first Monday in May next, to answer a bill in chancery exhibited against them in our said Court by Benjamin Eve, John G. Eve, Randolph Adams, and James F. Ballinger. And this they shall in nowise omit, under the penalty of four hundred dollars; and have then there this writ.

In testimony whereof, Roger B. Taney, Esq., Chief Justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed this 17th day of February, A. D. 1846, and in the 70th year of our Independence.

Attest: JNO. H. HANNA,
C. C. C., K. D.

Indorsed: The within named Tiernan and Williamson, and all others concerned, are hereby restrained and enjoined from all further proceedings on two executions which issued from the Clerk's Office of the 8th Circuit Court of the U. S. Kentucky District on the 15th December, 1845, in the name of said Tiernan and Williamson, against the within named John G. Eve, &c., until the matters alleged in the bill of said John G. Eve, &c. can be heard in equity.

Attest: JOHN H. HANNA,
C. C. C., K. D.

(*Injunction Bond.*)

The following is the injunction bond herein, to wit:—

Know all men by these presents that we, Benjamin Eve, John G. Eve, Randolph Adams, and James F. Ballinger, principals, and Robert P. Letcher, security, are held and firmly bound unto Charles Tiernan and David Williamson, surviving partners of the late firm of Luke Tiernan & Son, in the penal sum of six thousand dollars, for which payment, well and truly to be made, we bind ourselves,

and each of us, our and each of our heirs, executors, or administrators jointly and severally, firmly by these presents. Signed with our hands and sealed with our seals this 17th day of February, 1846.

The condition of the above obligation is such that whereas the above bound Benjamin Eve, John G. Eve, Randolph Adams, and James F. Ballinger, have prayed for and obtained from the Judge of the United States Kentucky District an order enjoining the defendants, their attorneys, and all others acting by their authority, or in their names, from all proceedings on the two judgments at law in the bill mentioned by process of execution, or otherwise for the enforcement thereof, until the matters of the complainants' bill shall be finally heard in equity, or this injunction shall be otherwise terminated.

Now, if the injunction awarded shall be dissolved, having been wrongfully obtained, then the complainants shall pay to the defendants the amount of the judgments at law enjoined, and all the damages and costs which shall be awarded against them in this case, then the above obligation shall be void; otherwise remain in full force and virtue.

[SEAL]
[SEAL]
[SEAL]
[SEAL]
R. P. LETCHER, [SEAL]
By B. Monroe, his Att. in fact.

The following are the receipts filed with the foregoing bill, to wit:—

(*Receipt* $250.)

Received, Lexington, 17th June, 1825, of Mr. John G. Eve, two hundred and fifty dollars, United States' notes, being on account of the note of himself and others to Messrs. Luke Tiernan & Son, Baltimore.

$250. L. TIERNAN & SON,
By William Leavy & Son.

(*Receipt* $500.)

Received, Lexington, 20th February, 1827, of Mr. John G. Eve, five hundred dollars for the account of Messrs. L. Tiernan & Son, of Baltimore.

$500. WILLIAM LEAVY & SON.

(*Receipt* $500.)

Lexington, Jan. 26, 1829, received of John G. Eve the sum of

five hundred dollars for or on account of Luke Tiernan & Son, Baltimore.

SAML. T. LEAVY,
for William Leavy & Son.

(*Receipt* $500.)

Lexington, March 30, 1830, received of John G. Eve five hundred dollars for Luke Tiernan & Son,

WILLIAM LEAVY & SON,
By J. J. Hunter.

(*Receipt* $600.)

Received from Joseph Eve the sum of six hundred dollars on account of a judgment in the Federal Court of Kentucky of Luke Tiernan & Son against said Eve and others.

WICKLIFFE & WOOLLEY,
FRANKFORT, *Feb.* 15, 1834. *Att's for Plaintiff.*

(*Receipt* $500.)

Received from Joseph Eve, by the hands of Joseph Ballinger, five hundred dollars on account of a judgment in the Circuit Court of the United States for the District of Kentucky, in the name of Luke Tiernan & Son against said Eve.

WICKLIFFE & WOOLLEY,
Att's for Luke Tiernan & Son.
LEXINGTON, *July* 15, 1835.

(*Receipt* $110.)

Received, Lexington, Feb. 16, 1836, for R. Wickliffe, Sr., one hundred and ten dollars of Joseph Eve.

E. K. SAYRE.

(*Receipt* $500.)

LEXINGTON, *Feb.* 5, 1835.

MY DEAR EVE:—

On reaching home on the 2d, I received your $500 of Mr. Porter, and wrote Mr. Tiernan your situation, and hope that he will sanction my withholding the execution. Why have you not send me the notes for the land I sold you—pray do so, if you wish the bargain to stand, as I presume you do. Another matter, deeply interesting to all, is pending before the legislature; I mean, a Bank at this place. Your man, Gilbert, goes against it. It is of vital importance to this place and to your county. Cannot you and your friends influence him? pray write him immediately to go for

the bill. His constituents have a deep stake in the improvement of this town as a mart for their coal, salt, the improvement of the Kentucky, &c. Do not delay a moment to write to Gilbert, and any other member of either house, particularly the Senate, that you can influence to vote for it. I start immediately to Frankfort to aid the passage of the bill, and let your letters come as fast as the post can bring them. Yours ever,

R. WICKLIFFE.

Indorsed—The Hon. JOSEPH EVE,
Barboursville, Kentucky.

And afterwards, to wit, at the May Term of the court aforesaid, to wit, on the fourth day of May, 1846, came the complainants by their counsel, and moved the court to continue the injunction granted by the District Judge herein during vacation, but the court not being advised took time, &c.

(*Order.*)

And at a subsequent day of the May Term aforesaid of said court, to wit, on the 14th day of May, 1846, came the parties by their counsel, and, the argument being fully heard, upon the complainants' motion to continue the injunction granted in vacation by the District Judge, and the court being advised, do order that the said injunction be continued until the further order of this court.

And afterwards, to wit, at the November Term of the court aforesaid, to wit, on the 13th day of November, 1846, ordered by the court that the complainants make Robert Wickliffe, administrator of Luke Tiernan, deceased, a defendant to this suit.

And at a subsequent day of the November Term aforesaid of said court, to wit, on the 14th day of November, 1846, ordered, that the order made herein on yesterday, in which it appears the court directed complainants to make R. Wickliffe, administrator of Luke Tiernan, a defendant, being incorrect, it is ordered that the same be set aside.

And afterwards, to wit, at Rules held in the Clerk's Office, before the Clerk, on Monday, the 1st day of February, 1847, came the defendant Charles Tiernan, by his counsel, and filed his answer herein; which answer is as follows, to wit:—

(*Answer of C. Tiernan.*)

The answer of Charles Tiernan, surviving partner of the late firm of Luke Tiernan & Son, late merchants of the city of Baltimore, in the State of Maryland, to a bill in Chancery filed against himself and David Williamson, as surviving partners of said firm, in the Federal Circuit Court for the District of Kentucky, by John G. Eve and others.

This respondent saving all just exceptions, &c. for answer to said bill, says that it is true that the late firm of Luke Tiernan & Sons

had a debt due to them from the complainants, as is stated in the bill; that a part of the same was paid to Wm. Leavy & Son, of Lexington, Ky., to whom the same had been intrusted for collection, and a balance remaining due, the bond or evidence of debt was committed to Robert Wickliffe, or Wickliffe & Woolley, of Lexington, to collect as attorneys at law; that after it was so committed to him or them, to wit, on the 16th July, 1834, there was received by remittance from Mr. Wickliffe, the sum of $594 06; on the 10th February, 1835, the sum of $500, and on the 17th August, 1835, the sum of $500, which sums fully paid off the demand against the complainants, overpaying the principal by the sum of about $300. As the surviving partner of the firm, I claim the right to control all the funds belonging to the firm, but against the complainants in this suit, I have no claim on account of the judgments referred to in the bill, the whole proceeding of suing out execution was without my approbation or knowledge, and I have no desire that complainants should be farther harassed by any legal proceedings. Judge Eve was known by the firm and known to be an honest man, possessing a high sense of honor, and therefore it was that great indulgence was extended to him in the payment of this debt.

Respondent insists that as the issual of the execution against the complainants was without his knowledge, consent, or approbation, that he should not be subjected to any costs in the case, and, having answered, prays to be hence dismissed.

CHARLES TIERNAN.

STATE OF MARYLAND,
City of Baltimore, to wit:—

On this 21st day of January, 1847, before the subscriber, a Justice of the Peace of the State of Maryland in and for the city of Baltimore aforesaid, personally appeared Charles Tiernan, and made oath on the Holy Evangely of Almighty God, that the matters and things stated and set forth in the foregoing answer, to which his name is subscribed, are true, to the best of his knowledge and belief.

Sworn before WILLIAM WARFIELD.

(*Set for Hearing.*)

And afterwards, to wit, at rules held in the Clerk's Office, before the Clerk, on Monday, the 5th day of April, 1847, came the complainants, by their counsel, and set this cause down for hearing at the next May term.

(*Heard.*)

And afterwards, to wit, at the May term of the Court aforesaid, to wit, on the 6th day of May, 1847, came the complainants, by their counsel, and gave the Court to be informed, that the defendant, David Williamson, had departed this life, and that the right in the

matter in controversy survives to the defendant, Charles Tiernan, as by him in his answer alleged; and the entry of this suggestion now, is allowed as if entered before the cause was set down for hearing at the rules.

(*Decree.*)

Wherefore this cause upon the bill and answer, and the Court being advised, do decree and order that the defendant, Charles Tiernan, surviving partner of Luke Tiernan, his attorneys and agents, be perpetually enjoined and restrained from further proceedings on the judgments at law, and the executions thereon in the complainants' bill mentioned; and that the defendant, Charles Tiernan, pay to the complainants their costs herein expended.

The following are the petitions presented by R. Wickliffe, Adm'r of Luke Tiernan, praying to be made a party to the foregoing suit in chancery, and the orders made upon the filing thereof.

(*Petition.*)

Petition to the Honorable Judges of the Circuit Court for the Ky. District:—

Your petitioner, Robert Wickliffe, respectfully showeth that he, many years since, for Luke Tiernan, commenced two suits in this Court against John G. Eve, Joseph Eve, James Ballinger and Adams, and with the aid of his then partner, A. K. Woolley, obtained judgments, on which sundry payments were made to said Woolley and your petitioner, for which receipts or acknowledgments were duly made, as he truly and verily believes the suing parties have filed in a case to be hereafter mentioned more particularly. He charges that a certain William Leavy, &c., without the knowledge of your petitioner, collected most of one of the judgments or notes, which fact was, after the obtaining of both judgments, made known to your petitioner, but so vaguely that he could not give the credits on the executions or judgments, which fact for several years prevented him from pressing executions; Joseph Eve always not only promising to furnish his vouchers of the payments to Leavy, but to pay off the debt for himself and the other def'ts before it could be collected by law; that he never did, however, furnish vouchers until he left the country, but about the time he left the country called on your petitioner with a statement of his payments to Leavy, and of those paid to your petitioner and his partner Woolley, and after allowing all the credits then claimed, the balance was ascertained to be over seven hundred dollars, a memo. of which he took with him, and promised to go to Frankfort and ascertain the amount of costs, and that the whole should be settled. But said Eve left the State and died out of the State, and

never, to his knowledge, paid another cent, nor hath the other defendants paid anything, as he believes and charges.

That Luke Tiernan and David Williamson had, as he was informed and believes, both departed this life several years, when *it* was ascertained died in debt to this *def't* a sum amounting to about $1,984, arising from over payments on the judgments of Tiernan & Williamson, or of Tiernan for the benefit of both, for which amount your petitioner commenced a suit in the General Court, and against said Tiernan's heirs, he being dead, as he believed, and said Eves & Adams, &c., praying that the money due from Eves should be paid to your petitioner in discharge of what Tiernan owed him. That the accounts were referred to a commissioner of that Court, and the balance, with the interest, was ascertained to be due and owing to your petitioner, was about $2,600 which, with the interest thereon, and every farthing, is still justly due to your petitioner. That your petitioner has heard that Charles Tiernan, if living and the surviving partner, had no interest in the judgment, having assigned or transferred to his father, as partial indemnity for the great losses he had brought upon him, and was in point of fact utterly insolvent. Of this fact he has no personal knowledge, but hath been so informed, and has no doubt of their truth. Your petitioner states that he is informed and believes that Joseph Eve, although but a security for the defendant, J. G. Eve, was then and still is insolvent, made a mortgage of some kind to the def't Adams of a considerable property, to indemnify him against loss for being security; that since the death of Joseph Eve, a speculator has taken or purchased the property so pledged, and undertaken to indemnify Adams by the payment of the debt. Of this he has no personal knowledge, but has been so informed, and believes his information to be substantially correct. That the said speculator, combining with the *def't*, knowing of the death of Luke Tiernan, and as he believes, of the utter ruin of Tiernan, and of the death of Williamson, has filed their bill in this Court, making David Williamson and Charles Tiernan parties defendants.

Your petition states, that it will appear from the bill to which he makes reference, that the pretended equity grows entirely out of transactions with himself and his partner Woolley. That being interested to the full extent of the amount due, and no executor or administrator of Luke Tiernan being appointed in this State as a creditor, in pursuance to the law of Kentucky, he applied to the proper court and hath obtained letters of administration, a copy of which he shows in court. He states that he verily believes that Mr. Tiernan is insolvent, and will never answer to or defend the suit; he therefore prays to be let in to defend said suit, and for that purpose that the complainants be compelled to amend their bill and to make him as administrator of Luke Tiernan, defendant, and on their refusing to do so that your Honors will discharge the injunc-

tion against the proceedings to collect the debt by execution. He will ever pray, &c.

R. WICKLIFFE.

Upon the back of the foregoing petition is the following indorsement:—

14*th November*, 1846.

This application is laid over to see whether the defendants to this bill will answer. If so, said Wickliffe will not be heard; if not, it may again be moved in next term.

J. CATRON.

The following petition is also found among the papers of this suit:—

(*Petition.*)

To the Circuit Court of the United States for the Kentucky District, R. Wickliffe would, in addition to what he hath heretofore stated on his petition to be made party defendant as administrator of Luke Tiernan, state, that since he filed his petition he has laid his hands upon the paper in the handwriting of said J. Eve, that will prove the statement that other and larger payments were made than credited, are untrue. That being informed that John G. Eve and Joseph Eve had the assent of all the parties to the indulgence they asked of Tiernan, and that Adams gave his assent to the indulgence upon J. Eve's executing to him a mortgage upon a large amount of property, and that, after J. Eve's death, one F. Ballinger became the purchaser of the negroes, agreeing either to defeat the claim of Tiernan or pay the debt, and that Ballinger was prosecuting suit upon such chancing bargain. He has received from the Clerk's Office of Knox, a copy of the mortgage, which he exhibits. He further states, that he caused a copy of complainants' bill to be made out, and inclosed it in a letter with a request that he would answer it to Charles Tiernan, but Charles Tiernan declined answering of it and returned it back, &c. But your petitioner has seen an answer or a paper purporting to be an answer of said Charles, as he believes prepared by the beneficiary or his attorney in this suit. That the said Charles Tiernan does and is not able to state, of his own knowledge (as he believes), the whole material facts necessary and proper to defend the charges in this bill, if he were desirous of doing so, which this petitioner believes, he is not. That he does not know Charles Tiernan, personally, but is informed, and believes his information, that he is not a responsible person; that he is insolvent, and has been discharged from his debts by some proceeding under the laws of Maryland; that David Williamson and Luke Tiernan are both dead; Tiernan survived Williamson, who was his son-in-law; that he is further informed, and believes his information, that the said Charles

was the cause of the great losses of the firm of Luke Tiernan & Son, which brought great distress upon Luke Tiernan, a wealthy man theretofore, and would have ruined Williamson but that he left the firm before the crash fell upon Luke Tiernan, by which he escaped the debts accumulated after he retired. How these matters are, as he speaks from information, he is unable to affirm, but as far as they exist will be established, if necessary, by this defendant being let in to answer.

This defendant states, that he is both the creditor and the administrator with the will annexed of Luke Tiernan, and is the responsible actor, as charged in the bill for Tiernan & Son, and claims the right to defend the case in the way that the law of chancery in this court prescribes. If made a party, he believes that he will show and make manifest that the payments claimed are without foundation in fact, and that the other matters alleged are neither cause for legal or equitable interference.

R. WICKLIFFE.

(*Order.*)

Upon the foregoing petition being presented these orders were made, to wit: on the 13th day of November, 1846: Ordered by the court that the complainants make R. Wickliffe, administrator of Luke Tiernan, deceased, defendant to this suit. And on the 14th day of November, 1846: Ordered, that the order made herein on yesterday, in which it appears the court directed complainants to make R. Wickliffe, administrator of Luke Tiernan, a defendant, being incorrect, it is ordered that the same be set aside.

UNITED STATES OF AMERICA,
Eighth Circuit, and Kentucky District, sct:

I, John A Monroe, clerk of the court for the circuit and district aforesaid, certify that the foregoing eighteen pages contain a true transcript of the record and proceedings had in the suit in chancery therein mentioned; and of the said petitions filed by R. Wickliffe and found among the papers of said suit.

Given under my hand this 9th February, 1853.

JOHN A. MONROE,
C. C. C., K. D.

No. 4. Petition of complainant, Wickliffe, to be made a party to the suit in chancery of Eve, &c. *vs.* Tiernan, and the orders made thereon; transcribed in the foregoing exhibit.

(*Motion to file a Bill of Review.*)

No. 5. Record of motion made by Wickliffe, November Term, 1847, for leave to file a bill of review.

UNITED STATES OF AMERICA,
Eighth Circuit and Kentucky District, November Term (18*th November*), 1847.

ROBERT WICKLIFFE, Adm'r of Compl't,
LUKE TIERNAN,
vs.
TIERNAN, &c., De'fts. } In Chancery.

This day came the complainants, and moved the court for leave to file a bill of review.

December 6, 1847.

This day came the defendants, Benjamin Eve, John G. Eve, Randolph Adams, and Francis F. Ballinger, by their counsel, and, the court being sufficiently advised, on the motion of the plaintiff, R. Wickliffe, administrator, &c. to file a bill of review, the motion to file the bill which was presented as a bill of review is overruled, but without prejudice to any right he may have to proceed on his case by any other bill in proper form.

A copy attest. JOHN A. MONROE,
C. C. C., K. D.

No. 6. Deposition of Charles Tiernan, with the documents thereto attached.

(*C. Tiernan's Deposition.*)

Interrogatories.

UNITED STATES OF AMERICA,
Eighth Circuit, Kentucky District, sct:

WICKLIFFE, Adm'r of LUKE TIERNAN,
vs.
EVE and others. } Interogatories to put to Charles Tiernan.

1. Are you the same Charles Tiernan who, on the 18th day of February, 1838, executed to Luke Tiernan a deed bearing that date, transferring and assigning to him all assets and interest whatever from Luke Tiernan & Son to Luke Tiernan, to which the name of Luke Tiernan and yourself are subscribed, and that of Luke Tiernan is signed by you, a copy (marked A) of which is now before you; and is the original of said copy your act and deed; and do you know what hath become of the original?

2. Have you not taken the benefit of the Maryland insolvent laws; and when did you take the benefit of said laws or act; and when did your father, Luke Tiernan, die?

3. Was or not the firm of Luke Tiernan & Sons composed of Luke Tiernan, David Williamson, and Charles Tiernan; and when

did David Williamson go out of that firm; and was not the business thereafter, on the same capital and at the same place, carried on in the name of Luke Tiernan & Son, that firm being composed of Luke Tiernan and yourself; and is not David Williamson dead, and when did he die?

4. Was, or not, David Williamson Luke Tiernan's *son-in-law;* and are you not the son of said Tiernan; and was not the capital of both firms furnished by Luke Tiernan; and did not Luke Tiernan & Son owe to Luke Tiernan the sums or amounts, and in manner stated in said deed? State all you know on this point.

5. Did you or not receive a letter from Robert Wickliffe, the complainant in this cause, inclosing you a copy of Benjamin Eve and others' bill in chancery against yourself as surviving partner of Luke Tiernan & Son, requesting you to make out your answer, and to inclose it to said Wickliffe as the attorney of said Luke Tiernan & Son to be filed; and why did you fail and refuse to make out your answer, as requested, and send it to Wickliffe, your attorney at law and administrator of your father, to be filed; and did you not have a letter or letters, from the complainant in that suit, requesting you to send your answer to them to be filed by them? If you did, state the substance of such letter or letters, and if you have the original or originals please file copies of them as part of your deposition.

6. Please to state if you were promised by writing or parol *by the complainants*, Eve and others, or any of them, that your debt should be paid, or the balance of it, if you would put in your answer so as to prevent the debt from going into the hands of R. Wickliffe as attaching creditor of Luke Tiernan & Sons; and did you not know when you put in your answer that Wickliffe had attached the funds in the hands of Benjamin Eve, &c. or the debt due to Luke Tiernan & Sons; and did you not hand over to the complainants in that suit your answer with a view to defeat the attachment of said Wickliffe?

7. You have now before you an official copy of the commissioner's report in the attachment case depending in the General Court of the State of Kentucky, wherein Robert Wickliffe is complainant, and said Eve, &c. are defendants, exhibiting the amount of the two notes sent by Luke Tiernan & Sons to said Wickliffe for collection by suit against said Benjamin Eve and others, and the credits on said notes. Are the amounts and credits on said notes truly stated, and is or not the balance due and owing from the said Eve and others to Luke Tiernan & Sons, as exhibited in that report, $1,774 63, the just and true balance due to L. Tiernan & Sons; and why did you, in your answer, state or admit that the notes were both paid off; and especially did you state that the payments made to Luke Tiernan & Sons or son overpaid one note; is that statement true, and are not the credits on your father's books of payments made by Wickliffe of the same amounts and dates as those

stated by the commissioner; and did they not, when you filed your answer, and do they not now, exhibit a considerable balance due on the first note collected by Wickliffe; and why were you induced to state that Wickliffe overpaid the first note, and that Leavys had paid the other, with your father's books or your own books before you showing the large balance then unpaid? Please to state all you can on this subject.

8. Have you not been discharged from the payment of the debts of Luke Tiernan and Sons & Luke Tiernan & Son, as well as your debts by the proper authorities of the State of Maryland, under her laws for the relief of insolvent debtors, and were you not so discharged before you filed your said answer? and please to say when you were so discharged.

9. Was not the firm of Luke Tiernan & Son liable for the debts of Luke Tiernan & Sons, and was not the money paid over by Wickliffe & Leavy, on the notes aforesaid of Benjamin Eve and others received by Luke Tiernan & Son, and used as their other funds to discharge their liabilities? if not, state how they were applied, and all you can on the subject.

A copy attest. JOHN H. HANNA.
C. C. C., K. D.

The deposition of Charles Tiernan, of the city of Baltimore, in the State of Maryland, a witness for the complainant in a certain cause or matter of controversy now pending in the Eighth Circuit Court of the United States in and for the Kentucky District, wherein Robert Wickliffe, administrator with the will annexed of Luke Tiernan is complainant, and Benjamin Eve, administrator of Joseph Eve, Richardson Adams, executor of Randolph Adams, James Ballinger, Robert P. Letcher, and Francis Ballinger, are defendants, produced and examined under and in pursuance of the commission or didimus hereto annexed, before me, John Carrere, a Commissioner appointed by the Circuit Court of the United States for the Fourth Circuit in and for the Maryland District, pursuant to the Act of Congress entitled "an Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," on the first day of January, A. D. eighteen hundred and fifty, at my office, in the city of Baltimore aforesaid.

The said witness being by me, the said commissioner, first carefully examined and cautioned, and sworn to testify the whole truth, to the interrogatories propounded to him and hereto annexed, doth depose, answer, and say as follows:—

To the first interrogatory he says: That he is the same Charles Tiernan who, on the 18th day of February, 1838, executed the deed mentioned in said interrogatory, transferring all assets from Luke Tiernan & Son to Luke Tiernan, and to which the names of this deponent and of Luke Tiernan & Son are signed by the deponent; that the copy of said deed marked A, now shown to deponent, is a

did David Williamson go out of that firm; and was not the business thereafter, on the same capital and at the same place, carried on in the name of Luke Tiernan & Son, that firm being composed of Luke Tiernan and yourself; and is not David Williamson dead, and when did he die?

4. Was, or not, David Williamson Luke Tiernan's *son-in-law;* and are you not the son of said Tiernan; and was not the capital of both firms furnished by Luke Tiernan; and did not Luke Tiernan & Son owe to Luke Tiernan the sums or amounts, and in manner stated in said deed? State all you know on this point.

5. Did you or not receive a letter from Robert Wickliffe, the complainant in this cause, inclosing you a copy of Benjamin Eve and others' bill in chancery against yourself as surviving partner of Luke Tiernan & Son, requesting you to make out your answer, and to inclose it to said Wickliffe as the attorney of said Luke Tiernan & Son to be filed; and why did you fail and refuse to make out your answer, as requested, and send it to Wickliffe, your attorney at law and administrator of your father, to be filed; and did you not have a letter or letters, from the complainant in that suit, requesting you to send your answer to them to be filed by them? If you did, state the substance of such letter or letters, and if you have the original or originals please file copies of them as part of your deposition.

6. Please to state if you were promised by writing or parol *by the complainants*, Eve and others, or any of them, that your debt should be paid, or the balance of it, if you would put in your answer so as to prevent the debt from going into the hands of R. Wickliffe as attaching creditor of Luke Tiernan & Sons; and did you not know when you put in your answer that Wickliffe had attached the funds in the hands of Benjamin Eve, &c. or the debt due to Luke Tiernan & Sons; and did you not hand over to the complainants in that suit your answer with a view to defeat the attachment of said Wickliffe?

7. You have now before you an official copy of the commissioner's report in the attachment case depending in the General Court of the State of Kentucky, wherein Robert Wickliffe is complainant, and said Eve, &c. are defendants, exhibiting the amount of the two notes sent by Luke Tiernan & Sons to said Wickliffe for collection by suit against said Benjamin Eve and others, and the credits on said notes. Are the amounts and credits on said notes truly stated, and is or not the balance due and owing from the said Eve and others to Luke Tiernan & Sons, as exhibited in that report, $1,774 63, the just and true balance due to L. Tiernan & Sons; and why did you, in your answer, state or admit that the notes were both paid off; and especially did you state that the payments made to Luke Tiernan & Sons or son overpaid one note; is that statement true, and are not the credits on your father's books of payments made by Wickliffe of the same amounts and dates as those

stated by the commissioner; and did they not, when you filed your answer, and do they not now, exhibit a considerable balance due on the first note collected by Wickliffe; and why were you induced to state that Wickliffe overpaid the first note, and that Leavys had paid the other, with your father's books or your own books before you showing the large balance then unpaid? Please to state all you can on this subject.

8. Have you not been discharged from the payment of the debts of Luke Tiernan and Sons & Luke Tiernan & Son, as well as your debts by the proper authorities of the State of Maryland, under her laws for the relief of insolvent debtors, and were you not so discharged before you filed your said answer? and please to say when you were so discharged.

9. Was not the firm of Luke Tiernan & Son liable for the debts of Luke Tiernan & Sons, and was not the money paid over by Wickliffe & Leavy, on the notes aforesaid of Benjamin Eve and others received by Luke Tiernan & Son, and used as their other funds to discharge their liabilities? if not, state how they were applied, and all you can on the subject.

A copy attest. JOHN H. HANNA.
C. C. C., K. D.

The deposition of Charles Tiernan, of the city of Baltimore, in the State of Maryland, a witness for the complainant in a certain cause or matter of controversy now pending in the Eighth Circuit Court of the United States in and for the Kentucky District, wherein Robert Wickliffe, administrator with the will annexed of Luke Tiernan is complainant, and Benjamin Eve, administrator of Joseph Eve, Richardson Adams, executor of Randolph Adams, James Ballinger, Robert P. Letcher, and Francis Ballinger, are defendants, produced and examined under and in pursuance of the commission or didimus hereto annexed, before me, John Carrere, a Commissioner appointed by the Circuit Court of the United States for the Fourth Circuit in and for the Maryland District, pursuant to the Act of Congress entitled "an Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," on the first day of January, A. D. eighteen hundred and fifty, at my office, in the city of Baltimore aforesaid.

The said witness being by me, the said commissioner, first carefully examined and cautioned, and sworn to testify the whole truth, to the interrogatories propounded to him and hereto annexed, doth depose, answer, and say as follows:—

To the first interrogatory he says: That he is the same Charles Tiernan who, on the 18th day of February, 1838, executed the deed mentioned in said interrogatory, transferring all assets from Luke Tiernan & Son to Luke Tiernan, and to which the names of this deponent and of Luke Tiernan & Son are signed by the deponent; that the copy of said deed marked A, now shown to deponent, is a

true copy, and the original was his act and deed; the original has been destroyed by the executors of the late Luke Tiernan, inasmuch as immediately after the decease of said Luke, the validity of said deed was submitted to arbitration, and the arbitrators decreed that said deed was null and void and of no effect, and the executors of Luke Tiernan have never claimed title since under said deed.

2. To the second interrogatory he says: That he applied for the benefit of the insolvent laws of Maryland in June, 1842, and that his father died in November, 1839.

3. To the third interrogatory he says: That the said firm of Luke Tiernan & Sons was composed of Luke Tiernan, David Williamson, and this deponent; that David Williamson went out of the firm in the year 1832, and the business thereafter was carried on at the same place (the City of Baltimore) and on the same capital, in the name of Luke Tiernan & Son—the said Luke Tiernan and deponent being the members of that firm. The said David Williamson died in 1837, and in February of that year, he thinks.

4. To the fourth interrogatory he says: That said Williamson was said Luke Tiernan's son-in-law, and deponent was his son; that the capital of both firms was furnished by said Luke Tiernan. He further says that the sum of eighty-seven thousand seven hundred and sixty-two dollars ninety-eight cents, mentioned in said deed, was not due to Luke Tiernan at the time of the execution of said deed, the said Luke having, on the dissolution of the firm of Luke Tiernan & Son, in 1836, transferred the same absolutely to deponent, but all subsequent advances by said Luke, after 1836, were *bona fide* due him.

5. To the fifth interrogatory, he says: That he received from said Robert Wickliffe a letter, such as is described in the interrogatory, but he did not receive any letters from the complainants in the suit mentioned in the interrogatory, requesting deponent to send his answer to them. Deponent did not answer, as desired by Wickliffe, because he believed at that time that the complainant Eve's bill was correct in stating that Eve's debt was paid, and he so informed Robert P. Letcher, or Monroe and Letcher, by letter, and he received an answer or answers to said letter from said Letcher, or Monroe & Letcher. And he did not answer said Wickliffe's letter, for the further reason that he did not recognize said Wickliffe as his attorney, and because he understood that Wickliffe had clandestinely taken out letters of administration on his father's estate in Kentucky, and had attached a debt due to Luke Tiernan & Sons, for a pretended debt due to him by the late Luke Tiernan, of the nature of which debt deponent is entirely ignorant, but understands that it arises from the unusual circumstance of a lawyer over-paying his client. Deponent has not the originals or copies of the letters, they are at present in the hands of Alexander Neil, of Hagerstown, the executor of Luke Tiernan.

6. To the sixth interrogatory he says: That he never was pro-

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mised by the complainants Eves and others, or any of them, that his debt should be paid, or the balance of it, if he would put in his answer so as to prevent the debt from going into the hands of R. Wickliffe. He did not hand over his answer to the complainants with a view to defeat the attachments of said Wickliffe.

7. To the seventh interrogatory he says: That he has now before him the said official copy of the commissioner's report in the attachment case named in this interrogatory (and hereto attached); that he has examined the same, and he believes the amounts and credits on the two notes sent by Luke Tiernan & Sons to the said Wickliffe for collection by suit against said Eves and others, are therein truly stated; and that the balance stated in said report is the true amount and just balance due Luke Tiernan & Sons, if the calculation of interest be correctly made in said report. Deponent further says, that the reason why he stated or admitted in his said answer that both notes were paid, and one note overpaid, was because, first, he did not find any balance claimed against Joseph Eve & Co. on the balance sheet of Luke Tiernan & Son, owing to the omission of the bookkeeper in not charging interest on the account of Joseph Eve & Co. with Luke Tiernan & Son; and secondly, deponent having been absent from Baltimore almost constantly from 1836 to 1844, knew but little of what was done in the business of Luke Tiernan & Son, and therefore when he received the before-mentioned letter from Robert Wickliffe, he consulted the bookkeeper of Luke Tiernan & Son, Mr. James C. Barry, who said there was no balance due to Luke Tiernan & Son, from said Eve & Co., but a balance due to Eve & Co. by Luke Tiernan & Son, and in order to convince deponent that such was the fact, referred him to Eve & Co.'s account, in Ledger B of Luke Tiernan & Son, of which the paper now produced by deponent, and filed as part of his answer to this interrogatory, marked C. T., is a copy. Whereas, if deponent had been referred to the origin of the account, he would have found that, owing to the accumulation of interest, a balance was due from said Eve & Co. to said firm.

He further says, that the credits in said account on the books of Luke Tiernan & Son were and are the same in amount as the credits on said account in said commissioner's report, except that the last credit, $110, is not credited in said books, and there is a small deduction on each credit on the books of Luke Tiernan & Son, for loss on uncurrent money remitted; and there are some charges made for postage.

8. To the eighth interrogatory he says: That he has been discharged under the insolvent laws of Maryland, and received his final discharge in October, eighteen hundred and forty-two.

9. To the ninth interrogatory he says: That the said firm of Luke Tiernan & Son was liable for the debts of Luke Tiernan & Sons, and the money paid over by Wickliffe and Leavy on the notes

of Eve & Co. was received by Luke Tiernan & Son, and used, as their other funds, to discharge their liabilities.

CHARLES TIERNAN.

Examination taken, reduced to writing, and by the witness sworn to and subscribed this first day of January, 1850, before me,

JNO. CARRERE,
Commissioner Circuit Ct. Md. Dist.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, Thomas Spicer, Clerk of the Circuit Court of the United States for the Fourth Circuit in and for the Maryland District, do hereby certify that John Carrere, Esquire, before whom the foregoing deposition was taken, was, at the time of taking the same, a commissioner duly appointed by the said Circuit Court, pursuant to the act of Congress entitled "an Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," and to all his acts as such full faith and credit is and ought to be given as well in courts of justice as thereout.

[L. S.] In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court, this third day of January, in the year of our Lord one thousand eight hundred and fifty.

THOS. SPICER,
Clerk Circuit.

On the foregoing deposition is indorsed: We, as counsel for Eve, &c., object to the reading of the deposition of Charles Tiernan, because of his interest in the subject-matter of the suit.

HARLAN & MONROE, for
EVE, &c.

These are the documents attached to and made part of the foregoing deposition:—

(*Charles Tiernan and Luke Tiernan & Son—Assignment to Luke Tiernan*)

Charles Tiernan to Luke Tiernan.

This indenture, made this twelfth day of February, in the year of our Lord one thousand eight hundred and thirty-eight, between Charles Tiernan, now of the City of New Orleans, Louisiana, formerly of the City of Baltimore, State of Maryland, of the one part, and Luke Tiernan, of Baltimore, State of Maryland, of the other part. Whereas, a partnership heretofore existed between the aforesaid Charles and Luke, under the name of Luke Tiernan & Son, carrying on business and trade in the City of Baltimore, which was dissolved

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on or about the first of August, eighteen hundred and thirty-six, at which time there was due and owing the aforesaid Luke Tiernan, on the books of the said firm of Luke Tiernan & Son, called "old account," as it stood on the books of Luke Tiernan & Sons when they dissolved, in April, eighteen hundred and thirty-two, amounting to the sum of eighty-seven thousand seven hundred and sixty-two dollars and ninety-eight cents, which capital has continued up to this date, and is now in the present firm of Luke Tiernan & Son, carried on by the said Charles Tiernan; no part of said sum has been drawn out by the said Luke Tiernan, nor has he been allowed any profits or interest on said sum from the dissolution of the old firm of Luke Tiernan & Sons, in April, eighteen hundred and thirty-two, to the first of August, eighteen hundred and thirty-six, when Luke Tiernan withdrew from the firm of Luke Tiernan & Sons, nor has Luke Tiernan received from said Charles Tiernan, or been paid by him, any part whatsoever of the aforesaid sum of eighty-seven thousand seven hundred and sixty-two dollars and ninety-eight cents, nor received any security or satisfaction for the same; neither has there been any part of the profits of the business of Luke Tiernan & Son, from its commencement, in April, eighteen hundred and thirty-two, to the first day of August, eighteen hundred and thirty-six, nor any interest on the beforementioned capital, yet placed to the credit of Luke Tiernan.

And whereas, since the dissolution of the aforesaid firm of Luke Tiernan & Son, the said Charles Tiernan has carried on trade and commerce for his own exclusive account and benefit, in the name of Luke Tiernan & Son, the said Charles Tiernan being the only one interested in said concern, publications of which beforementioned dissolution and new firm was duly made in the City of Baltimore and elsewhere on or about the beforementioned time. And whereas, the said Charles Tiernan stands indebted as Luke Tiernan & Son, to the aforesaid Luke Tiernan for large cash advances, amounting to the sum of forty-five thousand three hundred and sixty-seven dollars and eighty-seven cents; and the said Charles Tiernan, under the firm of Luke Tiernan & Son, has executed a note to Luke Tiernan, payable on demand for said sum, dated November the first, eighteen hundred and thirty-seven, bearing interest from date and payable on demand for the aforesaid sum; and the said Luke Tiernan has mortgaged his property and stocks, on which loans have been obtained, amounting to the sum of ninety-seven thousand eight hundred dollars, the whole of which has been paid to Charles Tiernan, for the use of the firm of Luke Tiernan & Son, also being bound for other large liabilities as payer and indorser on various bills and notes for the sole use and benefit of the said Charles Tiernan, under the firm of Luke Tiernan & Son, since the dissolution of the firm formed, and while conducting business in the name of the new firm of Luke Tiernan & Son, and for and in consideration of all such other sums as he, the said Luke Tiernan, may advance, or in any

way he may become liable for the said Luke Tiernan & Son, or Charles Tiernan; the said Charles Tiernan has agreed and proposed to assign all his estate, and effects, of every kind, unto the said Luke Tiernan, for the purpose hereinafter mentioned. Now this indenture witnesseth, that in pursuance and performance of the said proposal and agreement, and in consideration of the above recited premises and the further sum of five dollars to the said Charles Tiernan paid by the said Luke Tiernan, the receipt whereof is hereby acknowledged, the said Charles Tiernan as such, and for Luke Tiernan & Son, hath bargained, sold, assigned, transferred, and set over, and by these presents doth bargain, sell, assign, transfer, and set over unto the said Luke Tiernan or his executors, administrators, and assigns, all and singular the stock in trade, effects, debts, bonds, notes, sum and sums of money, books of accounts, and other things due and owing to the said Charles Tiernan by the firm of Luke Tiernan & Son, and all the estate and effects whatsoever, whether real, personal, or mixed, of him the said Charles Tiernan and the firm of Luke Tiernan & Son, and all their estate and interest, claims and demands therein; to have and to hold, receive, prescribe, and take the same unto the said Luke Tiernan, his executors, administrators, and assigns; and it is hereby declared and agreed that the said Luke Tiernan, his executors and administrators, shall stand possessed of and interested in the assignment by transfer now made upon trust, and to the intent that the said Luke Tiernan shall and do, in the first place, pay and retain to and reimburse himself for all such costs, and charges, and expenses as he shall or may pay, sustain, or expend in carrying into effect these presents; and the said Luke shall apply the property and estate now assigned to the payment and satisfaction of the amounts, claims, and purposes before referred to, as well as to the payment of such advances or liabilities as he, the said Luke, may have already made and incurred, or may hereafter make or incur; and, after satisfaction of the whole of the above amounts, claims, purposes, and liabilities, and of such costs, charges, and expenses as aforesaid, then in trust that the said Luke Tiernan, his executors and administrators, &c., and shall pay the surplus of the said property and estate unto the said Charles Tiernan, his executors, administrators, and assigns; and for the consideration and purposes aforesaid, the said Charles Tiernan as such, and for Luke Tiernan & Son, hath made, constituted, and appointed, and by these presents doth make, constitute, and appoint the said Luke Tiernan, his executors and administrators, his and their true and lawful attorney or attorneys, in the name of the said Charles Tiernan or Luke Tiernan & Son, or otherwise to adjust, settle, and liquidate all accounts, claims, and demands relating to the premises, and from time to time to collect, get in and use, and take all or any legal or equitable means, courses, and expedients, for the recovery and receipt of all the debts and sums of money or other claims and demands mentioned, to be hereby assigned as aforesaid; and upon

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receipt thereof, or any part thereof, receipts, acquittances, and other effectual discharges, for the same or so much thereof as shall then be acknowledged or expressed to have been received, to make, sign, seal, and deliver, and compound for bad and dubious debt or debts, and one or more attorney or attorneys, agent or agents, under him for all and any purpose aforesaid from time to time to appoint, and again at his pleasure to displace, and further to do and execute all and every other act and acts requisite and expedient to be done in and about the premises, as fully and amply to all intents and purposes as he, the said Charles Tiernan, and Luke Tiernan & Son, might or could do, or have done, in his own or their persons; if these presents had not been made, and the said Charles Tiernan, and Luke Tiernan & Son, for himself or themselves, his and their heirs, executors, and administrators, do covenant, promise, and agree to and with the said Luke Tiernan, his executors and administrators, by these presents, in manner following, viz.: that the said Charles Tiernan, or Luke Tiernan & Son, his or their executors and administrators, shall and will at all times hereafter justify and allow, ratify and confirm all and whatsoever the said Luke Tiernan, or his executors or administrators, shall lawfully do or cause to be done in and about the premises, and shall not nor will not revoke or make void all or any of the powers hereby given, or in pursuance of these presents to be given to the said Luke Tiernan, his executors or administrators, nor release, discharge, or compound for all or any of the debts, effects, property, claim, or demands mentioned or intended to be hereby assigned as aforesaid, or sue for or intermeddle with the same or any part thereof, nor do anything whereby the recovery thereof, or any part of them, or any parts thereof shall be in anywise hindered or prevented, or otherwise act or interfere in or about the premises further or other than the said Luke Tiernan, his executors or administrators, shall desire or require. And also that the said Luke Tiernan, his executors or administrators, shall not be charged or chargeable with any sum or sums of money other than such as shall actually come into his or their possession, nor with or for any loss or charges which shall or may happen in or about the execution of these presents without his or their wilful default. In testimony and witness whereof, the said Charles Tiernan for himself, and for Luke Tiernan & Son, have hereto set his and their hands and seals, the day and date above written.

[SEAL.] CHAS. TIERNAN,
[SEAL.] LUKE TIERNAN & SON,
[SEAL.] by CHAS. TIERNAN.

Witnesses,
F. M. GUYOL,
O. P. JACKSON.

STATE OF LOUISIANA,
City of New Orleans, ss:

Be it remembered, that we, O. P. Jackson and F. M. Guyol, two Associate Judges of the City Court of New Orleans, and Justices of the Peace thereof, do hereby certify that, on the 12th day of February, 1838, at the city of New Orleans, personally appeared to us, known, Charles Tiernan, the person named and described in the foregoing instrument and deed, who acknowledged before us on oath that he had signed the same, as well for himself as for the firm of Luke Tiernan & Son, and that it was his act and deed.

In testimony whereof we have hereto put our hands and seals this 12th day of February, 1838, at the city of New Orleans.

[SEAL.] O. P. JACKSON,
[SEAL.] F. M. GUYOL, *Judge.*

UNITED STATES OF AMERICA,
State of Louisiana:

By Edward D. White, Governor of the State of Louisiana, these are to certify that F. M. Guyol and O. P. Jackson, whose names are subscribed to the instrument of writing herein annexed, are Associate Judges of the City Court of New Orleans; that their signatures are genuine, and that all their official acts, as such, are entitled to full faith and credit.

Given at New Orleans, and under my hand and the seal of the [L. S.] State, this twelfth day of February, one thousand eight hundred and thirty-eight, and of the independence of the United States the sixty-second.

E. D. WHITE.

Received to be recorded the 23d day of December, 1840, at ¼ before 4 o'clock P. M.; same day recorded and examined per

THOS. KOLL,
Clerk.

In testimony that the foregoing is truly copied from Liber T. K., No. 62, folio 408, &c., one of the Chattel Records of Baltimore County Court, I hereto subscribe my name and affix the seal of said court this 29th day of December, 1844.

A. W. BRADFORD,
Clerk.

The foregoing deed is indorsed as follows:—

CHARLES TIERNAN, &C. ASS'T to LUKE TIERNAN. } Copy. (*A.*)

Produced and shown to Charles Tiernan, and by him deposed

unto in his answer to the first interrogatory on his examination before me this 15th January, 1850.

JNO. CARRERE, *Com'r*
Circuit Court Md. Dist.

(*Copy Master's Report.*)

Copy report of the Master in Chancery of the General Court of Kentucky:—

R. WICKLIFFE, Compl't, vs. L. TIERNAN and others. } In Chancery in the General Court of Kentucky.

The papers in the above-named cause have been a second time referred to me as commissioner to audit and settle the accounts between the parties. On the 5th of the present month, the complainant, J. Harlan, Esq., attorney for Tiernan's executors and myself, met at my office. I then gave notice to Judge Ben. Monroe, who was supposed to be the attorney for the other defendants; a copy of the same, with evidence of its service indorsed thereon, is filed herewith. In an interview had with Judge Monroe afterwards, he informed me that he was not the attorney of any of the parties, and had nothing to do with the case. At the suggestion of the complainant, Mr. Harlan stated that he would not require proof of the handwriting of L. Tiernan, or of L. Tiernan & Son.

I have carefully examined the bill, answers, and exhibits filed in the cause, under the supposition that new testimony had been introduced, or serious errors discovered in my former calculations that would authorize the quashing of the report then made, and resubmission of the case. In making this examination, I have not as yet discovered anything that would justify the belief that the result of the calculation now about to be made, would differ materially from the former one. I shall be satisfied if I get "wool" enough to pay for the time and labor necessarily devoted to a re-examination of the subject, and the making of another report.

A copy of the judgment, marked *A*, of L. Tiernan, surviving partner, &c., against Thomas D. Owings, from the Clerk's Office of the United States 8th Circuit Court in and for the Kentucky District, shows that the debt due by Owings to Tiernan draws interest from the 16th of July, 1817, and amounted, at that time, to the sum of $5,425 75.

Voucher,	Nos. 1, 2, & 3,	shows payment of		$400	00,	July 5,	1819.
do	do	do	do	304	50,	June 9,	1824.
do	do	do	do	600	00,	Aug. 15,	1825.
do	No. 4,	do	do	1000	00,	Nov. 13,	1829.
do	No. 5,	do	do	1700	00,	Nov. 30,	1829.
do	Nos. 4, 5, & 6,	do	do	948	88,	Feb. 22,	1830.
do	No. 7,	do	do	1046	15,	April 1,	"

Voucher	Nos. 7, 8, & 9,	shows	payment of	100 00,	Ap'l 16,	1830.
do	do	do	do	650 00,	May 1,	"
do	No. 10,	do	do	496 25,	May 31,	"
do	No. 11,	do	do	597 00,	Oct. 22,	"
do	No. 12,	do	do	493 47,	Jan. 28,	1831.
do	No. 13,	do	do	1136 90,	Feb. 22,	"
do	No. 14,	do	do	214 39,	July 9,	"
do	No. 15,	do	do	454 23,	Mar. 5,	1832.
do	No. 16,	do	do	237 81,	May 29,	"
do	No. 17,	do	do	500 00,	Feb. 1,	1834.
do	No. 18,	do	do	500 00,	Jan. 3,	1835.
do	No. 19,	do	do	200 00,	Feb. 11,	"
				$11,579 58		

(*A*). These vouchers are letters from Tiernan to the complainant, acknowledging the receipt of the several named sums upon the judgments before alluded to against Thomas D. Owings.

The account between the parties now stands as follows:—

	Robert Wickliffe to L. Tiernan, &c.		*Dr.*
1847.			
16th July,	To amount of judgment Tiernan *vs.* Owings		$5,425 75
	Int. in same to 5th July, 1819, 1 y. 11 m. 20 d. . . .	$642 04	
	Now cr. cash, vouchers Nos. 1, 2, & 3	400 00	
		242 04	
	Int. on principal to 9th June, 1824, 4 y. 11 m. 4 d. . .	1604 20	
1824.		1846 24	
9th June,	Now cr. cash, vouchers Nos. 1, 2, & 3	304 50	
		1541 74	
	Int. on principal to 15th Aug. 1825, 1 y. 2 m. 6 d. . .	385 22	
		1926 96	
1825.			
15th Aug.	Now cr. cash, vouchers 1, 2, & 3	600 00	
		1326 96	
	Int. on principal to 13th Nov. 1829, 4 y. 2 m. 29 d. . .	1372 66	
		2699 62	

1829.			
13th Nov.	Now credit cash, voucher No. 4	1000 00	
		1699 62	
	Int. on principal to 30th Nov. 1829, 17 d.	15 38	
		1715 00	
30th Nov.	Now cr. cash, voucher No. 5 .	1700 00	
			15 00
	Int. on principal to 22d Feb. 1830, 2 m. 23 d.		75 00
			5515 79
1830.			
Feb. 22,	Now cr. cash, see voucher 4, 5, & 6 . .		948 88
			4566 91
	Int. on balance to 1st April, 1830, 1 m. 10 d.		30 44
			4597 35
1830.			
April 1,	Now credit cash, see voucher No. 7 . .		1046 15
			3551 20
	Int. on balance to 16th April, 1830, 15 days		8 88
			3560 08
1830.			
April 16,	Now cr. cash, see voucher 7, 8, & 9 . .		100 00
			$3460 08
	Am't brought over		$3460 08
	Int. on balance to 1st May, 1830, 15 days		8 65
			3468 73
1830.			
May 1,	Now cr. cash, see voucher Nos. 7, 8, & 9		650 13
			2818 60
	Int. on balance to 31st May, 1830, 30 days		14 09
			2832 69
1830.			
May 31,	Now cr. cash, see voucher No. 10 . .		496 25
			2336 44
	Int. on balance to 22d Oct. 1830, 4 m. 22 d.		55 28
			2391 72

1830.			
Oct. 22,	Now cr. cash, voucher No. 11 . . .		597 00
			1794 72
	Int. on balance to 28th Jan. 1831, 3 m. 6 d.		28 10
			1823 42
1831.			
Jan. 28,	Now cr. cash, voucher No. 12 . . .		493 47
			1329 95
	Int. on balance to 22d Feb. 1831, 25 days .		5 54
			1335 49
1831.			
Feb. 22,	Now cr. cash, see voucher No. 13 . .		1136 90
			198 59
	Int. on balance to 9th July, 1831, 4 m. 18 d.		4 55
			203 14
1831.			
July 9,	Now cr. cash, see voucher No. 14 . .		214 39
	Due to R. Wickliffe . . .		$11 25
	Int. on balance to 9th Jan. 1848, 16 y. 6 d.	11 13	
1832.			
March 5,	He then paid this sum, see voucher No. 15 . . .		454 23
	Int. on same to 9th Jan. 1848, 15 y. 9 m. 27 d. . . .	415 54	
1832.			
May 29,	He now paid this sum, voucher No. 16		237 81
	Int. on same to 9th Jan. 1848, 15 y. 7 m. 11 d. . . .	222 77	
1834.			
Feb'y 1,	He now paid this sum, voucher No. 17		500 00
	Int. to 9th Jan. 1848, on same, 13 y. 11 m. 9 d. . . .	419 02	
1835.			
Jan'y 3,	He now paid this sum, voucher No. 18		500 00
	Int. on same to 9th Jan. 1848, 13 y. 0 m. 6 d. . . .	390 50	

Feb. 11,	He now paid this sum, voucher No. 19		200 00
	Int. on same to 9th Jan. 1848, 12 y. 10 m. 29 d. . . .	154 97	
		$1613 93	$1903 29
			1613 93
			$3517 22

I now report that there is due to the complainant, Robert Wickliffe, from the defendant Luke Tiernan's heirs and representatives, the sum of three thousand five hundred and seventeen dollars twenty-two cents.

As I before remarked, all the credits which I have allowed are acknowledged by the defendant Luke Tiernan, to have been received by him upon the judgment against Thos. D. Owings. In the paper marked B, on this 5th of Oct. 1835, Mr. Tiernan makes out his account against Owings, and there shows that Owings is indebted to him on said payments in the sum of $1726 $\frac{61}{100}$.

He obtained this result by committing two blunders; 1st, he omits to give credit for payments which he had acknowledged to have received as follows, viz:—

On the 5th of July, 1819,	$400.	See voucher Nos.	1, 2, and 3.
On the 9th of June, 1024,	$304 50	do .	1, 2, and 3.
On the 25th of August, 1825,	$600	do .	1, 2, and 3.
On the 1st of April, 1830,	1046 15	do .	No. 7.
	$2350 65		

And secondly, he commences his account Oct. 1829, with the sum of $9893 $\frac{45}{100}$, instead of with the sum of $5425 $\frac{75}{100}$, in July, 1817; the former sum is intended to be made up by adding together the principal of the judgment against Thomas D. Owings, the accruing interest and the damages and costs, ordinary and extraordinary, excluding the payments named above, and their corresponding whole.

In Dec. 1835, he renders another account (see it marked C), and acknowledges the omission of the credit of $1046 $\frac{15}{100}$, on the 1st of April, 1830, and makes the balance due him amount to the sum of $348 96. He still omits the three first credits named above, amounting to $1304 $\frac{50}{100}$; commences the account again in October, and starts with the sum of $9832 $\frac{82}{100}$, made up, I suppose, as the previous one had been. Interest is also compounded here.

A calculation, with the application of the proper credits, will show that there was not due to him on the 1st of October, 1829, the sum assumed by him, by near two thousand dollars; that is to say, by the sum of $1733 62. This error fully accounts for the

difference between my account and that of Mr. Tiernan, for the sum of $1733 62, put out at interest in October, 1829, would at the present time overrun my account.

I have been more minute in giving these details than I should have been, but for the fact that the papers have been referred to me a second time, just as they were when I had them before, without any additional exhibits being filed, having any reference to the pecuniary transaction between the parties, without any intimation from the court, either in the order quashing the report, or in the one referring the papers to me again, that I had erred in my former account, or that I was expected to do any specific thing, other than in general terms to audit and settle the account between the parties; neither have either of the parties interested, suggested anything from which I could infer that anything special was required of me. Under these circumstances I thought proper to go over the whole ground, as though it had been the first time the papers had been before me.

At the request of the complainant, R. Wickliffe, I have audited and settled the accounts between Luke Tiernan & Son, and John G. Eve and others; the papers marked D, E, and F, are the vouchers upon which the settlement is predicated.

John G. Eve and others, To L. Tiernan & Son, Dr.

1822.		
Dec. 1, To am't judgment, see voucher D .		$1308 44
" int. on same to 1st, Dec. 1823 .	$78 50	
" am't cost of suit, D . . .	29 84	
1823.		
Dec. 1, Am't. judgment voucher E, . .		1383 95
Am't cost of suit, E . . .	29 84	
	$138 18	$2692 39
Int. on 2692 39, to 17 June, 1825, 1 y. 6 m. 17 d. . . .	249 94	
	388 12	
1825.		
17 June, Now credit cash to Leavy, &c. .	250 00	138 12
Int. on $2692\frac{39}{100}$, to 20 Feb. 1827, 1 y. 8 m. 3 d.		270 60
		$3101 11
1827.		
Feb. 20, Now credit cash to Leavy, &c. . . .		500 00
		2601 11
Int. on bal. to 26 Jan. 1829, 1 y. 11 m. 6 d.		301 72
		2,902 83

1829.	
Jan. 26, Now credit cash to Leavy, &c. . . .	500 00
	$2402 83
1830.	
Mar. 2, Int. on balance to 20 March, 1830, 1 y. 1 m. 24 d.	165 19
	2568 62
Mar. 20, Now credit cash to Leavy, &c. . . .	500 00
	2068 62
Int. on balance to 15 Feb. 1834, 3 y. 10 m. 26 d.	484 74
	$2553 36
1834.	
Feb. 15, Now credit cash to R. Wickliffe . . .	600 00
	1953 36
Int. on balance to 2 Feb. 1835, 11 m. 17 d.	111 97
	$2065 33
1835.	
Feb. 2, Now cr. cash to R. Wickliffe	500 00
	$1565 33
Int. on balance to 15 July, 1835, 4 m. 13 d.	41 15
	$1606 48
Am't over	1606 48
July 15, Now cr. cash to R. Wickliffe . . .	500 00
	$1106 48
Int. on bal. to 16 Feb. 1836, 7 m. 1 d. .	38 90
	1145 38
1836.	
Feb. 16, Now cr. cash to R. Wickliffe . . .	110 00
	$1035 38
Int. on bal. to 9 Jan. 1848, 11 y. 10 m. 24 d.	739 25
	$1774 63

These credits are all founded on voucher marked F. I now report that John G. Eve and others are indebted to L. Tiernan & Son, the

sum of one thousand seven hundred and seventy-four dollars sixty-three cents. All of which is respectfully submitted.

January 8th, 1848.

AUSTIN P. COX,
Commissioner.

The Commissioner charges $40 for his services.

Received of Rob. Wickliffe, Sr., Esq., forty dollars, my fee in case of himself, complainant, and Tiernan and others defendants, in the General Court, May 1, 1858.

AUSTIN P. COX.

A Copy Atteste: A. H. RENNICK,
C. G. C.

Indorsed: Shown to Charles Tiernan, and by him deposed unto in his answer to the seventh and eighth interrogatories, on his examination before me the 1st January, 1850.

JOHN CARRERE,
Com. Cir. Ct. U. S., Md. Dist.

Copy taken from Tiernan & Son's Ledger, B.

1830. Joseph Eve & Co., *Dr.*

March 1, To balance from Ledger A, . .	$1908 54
1831.	
January 8, " cash (postages), . . .	1 50
	1710 04
1831.	
October 1, To balance, ...	1212 77
1832.	
Dec. 31, " Cash	75
	1213 52
1834.	
August 6, To balance	619 46
1835.	
Dec. 31, " charges	1 00
1836.	
April 1, To balance Ledger C, . . .	374 54
	$995 00

725

Cr.

1830.		
May 8, By Cash,		$497 27
By balance		1212 77
		1710 04
1834.		
July 16, By Cash		594 06
" balance		619 46
		1213 52
1835.		
Feb. 10, By Cash		497 50
Aug. 17, " Cash		497 50
		$995 00
1836.		
April 1, By balance due to Joseph Eve & Co.		$374 54

Copy taken from L. Tiernan & Son, Ledger B, folio 40.

(Indorsed as follows:)

C. T.

Produced and filed by Charles Tiernan, and by him deposed unto in his answers to the eighth interrogatory on his examination before me, this first January, 1850.

JNO. CARRERE,
Com. Circuit Court, Maryland District.

WICKLIFFE vs. TIERNAN, &c. } Copy Bill.

No. 7. Copy bill from Clerk's office, General Court, in the name of Wickliffe *vs.* Tiernan &c.

To the Honorable the Judges of the General Court in Chancery sitting, Robert Wickliffe, a citizen and resident of the State of Kentucky, would represent that many years ago a certain Luke Tiernan, a citizen and resident of the State of Maryland, placed in his hands as an attorney at law, a note on Thomas Dye Owings of this State for collection, bearing interest from the 16th day of July, 1817, for $, on which note your orator brought suit, and recovered judgment for $ in the Circuit Court of the United States for this District; that in the prosecution of the suit, he entered himself security for costs, and from beginning to end, as he verily believes and charges, paid every cent of them, unless as

he once thought Mr. Tiernan had done, advanced to a deputy marshal some trifling amounts, amounting to some four or five dollars. But as Mr. Tiernan has not confirmed his impressions by a charge, or statement that he had done so, and your orator has no personal knowledge of it, he presumed he was mistaken in supposing that Mr. Tiernan ever paid anything.

That after the judgment was obtained, Owings replevied it repeatedly, and one enjoined it, or perhaps oftener; gave several forthcoming bonds, and by various shifts accumulated by Marshal's commissions, Clerk's fees, &c., &c., enormous costs, which were from time to time consolidated in replevin bonds, &c., given by him to delay collections. That for the costs, heavy as they were, your orator never drew or called on the said Luke Tiernan (who is a now resident of Kentucky, and as such made defendant to this bill), but in times of great difficulty in raising money, paid and advanced from his own funds the whole costs until he could force them from Owings; that afterwards, and while Owings was staving off payments, what are styled relief laws were passed, and under them and other pretexts he gave up large bodies of land, and sometimes hired or got them without hire, persons to overbid real buyers, who would then refuse to pay or comply with the laws, and by such contrivances and others, rendered the collection of said debt of the defendant extremely difficult, if not impracticable. That about the same time judgment against Owings to an enormous amount in the State and National Courts were rendered, and the same lands in whole, or in part levied upon, by which the defendant's lands were sold for other judgment-creditors; added to this almost all the valuable lands levied on were under old mortgages for debts alleged to be unsatisfied; and Owings, by a sweeping deed, conveyed to mortgagees his whole estate, except some nominal claims to lands worth little, and involved with partners and other claimants. In these embarrassments your orator hired agents, and sent them into distant places to bid for the *defendants*, and force the sales of Owings' property, by which he increased heavy expenses, and these agents proving ineffectual, he left his other business and attended to the sales personally, until he forced sales of all lands levied on, which only in part satisfied the defendant's debt. The lands purchased were of value greater than the amounts bid for them, but the legality of the sales was doubtful, and they were covered by adversary claims and mortgages, &c., as aforesaid. This *respondent* had also heavy pecuniary claims for others on Owings, unsatisfied, among which was a very large one in the name of Samuel Smith, of Baltimore, for which Owings and securities, who were liable for the balance of Tiernan's debts, were liable. In this situation Owings applied to Tiernan, as your orator believes and charges, to accept his debt and to convey the lands bought to his, Owings' children, or for their use, which Tiernan agreed to do, and wrote to your orator that he had agreed with some of Owings' friends in Baltimore, to let Owings

have the lands and *have to them* bought for him; that they, or one of them, agreeing to pay his debts off, &c., and requesting a statement of his debt and accounts against Owings. This account or statement, this *respondent* no doubt forwarded Mr. Tiernan, which included all costs, fees, &c., and the charges on the part of your orator. That Tiernan, if he settled with Owings, might receive not only his debt, but what was coming both from the debt and his charges up to that time, and the money your orator had expended for Mr. Tiernan. Of this statement and letter your orator kept no copy, and has only an impression of its contents.

At a subsequent period, Tiernan informed your orator that the negotiation with Owings and his friends had failed, and urged this respondent to close the business in the best way he could, and in one of his letters proposed to make your orator interested in the lands; this proposal your orator declined, and, finding or seeing no earthly prospect of making Mr. Tiernan his money out of his purchases by a sale of the lands, and holding the heavy debt over Owings, and his securities of Samuel Smith, aforesaid, unsatisfied without any reasonable prospect of ever getting the whole of the debt, as well as the balance due Tiernan, even if he should utterly ruin and bankrupt every security Owings had, some of whom had conveyed away their whole estates and had died, and one had left the State. In this dilemma, and knowing Mr. Tiernan's great desire to get his debt and nothing more, your orator proposed to a part of the securities of Owings, that if they would agree to pay, each, their fair proportion of Tiernan's debt, that your orator would bid for the lands sold for said debt on sales intended to be made by Smith of the same lands, the whole amount of the debt of Smith, and look to Owings alone for the balance of Tiernan's debt. They, as mortgagees of Owings, to ratify the sale to Ellicott & Meredith, said Smith's assignees, and thereby not only satisfy some fifty or sixty thousand dollars more of debt for Owings himself, but relieve them, his securities and mortgagees, from the ruin which was impending over them. This proposal was conditioned that Mr. Tiernan should agree to accept his debt, payable at such times as they, the securities, thought they could pay, and Messrs. Ellicott & Meredith would agree to become the purchasers at Marshal's sales, &c. To this proposal Howard and others, Owings's securities, expressed their assent, and desired your orator to effect it for them, if practicable. Your orator opened a correspondence with Tiernan & Meredith and Ellicott, in which he proposed to pay Mr. Tiernan his principal and interest clear of costs, and for him to transfer to Ellicott & Meredith, the trustees of Samuel Smith, who had conveyed the debt on Owings to them in part security of a great sum due by him to the Bank of the United States. To the proposal Mr. Tiernan readily assented, and wrote to your orator, expressing his assent, and the terms of payment, and in his letter, dated at Baltimore the 4th Nov., 1827, authorized and requested

your orator to close the agreement at once, on the basis of his receiving the full amount of his principal and interest paid him in Baltimore, and that your orator also received ample compensation, &c., which letter, marked A, is herewith filed and made a part of this bill.

Your orator would state that Mr. Tiernan had, as early as 1826, in a letter dated the 30th of September of that year, expressed to your orator his willingness to accept his principal and interest, and a part of the damages, &c. on a protested bill, but as the affair about the bill amounted to but little, it was waived in his letter of the 4th November, and which last letter, marked B, is also here filed, and made part of this bill.

Your orator states that, owing to the said Ellicott & Meredith being mere trustees for the Bank of the United States, and for Smith their debtor, it took some time to obtain their assent to the arrangements; but that assent was finally obtained, and the amount of Mr. Tiernan's debt paid, and secured to be paid by Owings' mortgagees, and the whole lands bought for Mr. Tiernan were resold, and Ellicott & Meredith became the purchasers, to whom the mortgagees released all claim and possession which they had, as will appear by the deed, which can be shown if required, or deemed necessary. Your orator would state, in closing the transaction with Owings' trustees, he took their notes to Mr. Tiernan to cover all his debt and interest, and the whole costs and charges to your orator, and in his letter so advised the defendant Tiernan; it being part of the arrangement, that your orator should take the whole notes and pay to Tiernan in Baltimore, free of all charges, his debt and interest. That in pursuance to this agreement, he, out of his own money, and that that he from time to time received from Owings's trustees, paid to Mr. Tiernan his whole debt and interest in Baltimore funds, before he collected the debt from Owings's trustees, a considerable portion of which is still due and unpaid by them to your orator. That in his letters to Mr. Tiernan, advising him of the settlement, &c. of his debt, he stated the gross amount in such manner as to induce him or his clerk to suppose more was due than the amount of principal and interest, as he supposes, as the said Tiernan, instead of relying on the letter in which he prescribed the terms, and on which your orator acted, insists upon the letter of information as aforesaid, for a claim beyond his principal and interest; when that letter was not intended to, and could not change the express agreement or basis on which the settlement of his debt was made, and was written hastily, under a full impression that Mr. Tiernan well knew that he was only to receive his debt in Baltimore, where it ought to have been paid by Owings, and that every cent beyond his principal and interest was intended to cover my expenditure for him, and to compensate me for my long, laborious, and most unpleasant professional services. But, notwithstanding the said Tiernan and your orator well understood the said Tiernan

was to get his debt and interest aforesaid, and all beyond that was to go to satisfy your orator, the said Tiernan's clerk continued to write for money, and your orator remitted, or caused to be remitted to him without reference to his books, until he by error or mistake paid him, over his debt the full sum of $1,774 39 on the 11th of February, 1835, as will appear by a copy of your orator's accounts here filed, marked C. Your orator states that, immediately on discovering the error, to wit, on the 26th of October, 1835, he wrote to Mr. Tiernan of that date, enclosing him a copy of the account C, and requesting repayment of the sum overpaid: a copy of this letter is herewith filed, marked D, and made part of this bill.

Your orator states that, on the 3d of October, 1829, he concluded the basis of a settlement with Owings's mortgagees as to all and every charge made against them for principal, interest and costs, and damages by Mr. Tiernan, and as Mr. Tiernan was not to pay this respondent his commissions, &c., for settling, and receiving, and paying over the entire debt, he took three separate notes for that service, &c. for $576, which he considered as between Tiernan and himself should be postponed to the last payment, and in his letter, after stating the entire debt as compounded, he stated that sum due to Tiernan clear of his charges on ac't of charges, &c. for settlement and paying over the money. That Mr. Tiernan has, by some strange perversion of the meaning of that letter, which was only intended to explain what he had done—what compensation he had taken or charged for—all he had done or expected to do with Owings's trustees, as totally vacating his contract, and giving Mr. Tiernan a claim to all your orator had before performed and done for him against Owings, and paid and expended for him, Tiernan. Your orator wrote hastily, and kept no copy of his letter of 3d Oct., but herewith files Mr. Tiernan's letter of the 24th Nov., 1836, to which he has annexed an extract of your orator's letter, marked E.

Your orator also herewith files a copy of his letter of the 12th December, 1835, the original being in the possession of the def'ts, marked F. Your orator also files a copy of his letter to the def'ts of the 30th of November, 1836, the original of which was sent and is in possession of the defendant (marked G), to which he has received no reply. These letters not only manifest how unjust and ill-founded are the claims of the defendant, but the great labor and pains taken by your orator to convince the defendant of his error, and to have the matter referred to disinterested friends. But all your orator's endeavors have failed, not, he hopes from any disinclination of Mr. Tiernan to do right, but from his mistaken ideas of what is his rights; for, from a long acquaintance, and having had much business to transact with the defendant, your orator is free to declare that nothing has ever occurred to shake his confidence in the perfect honor and integrity of the defendant; and he verily believes that had no other person interfered, that long since would

your orator to close the agreement at once, on the basis of his receiving the full amount of his principal and interest paid him in Baltimore, and that your orator also received ample compensation, &c., which letter, marked A, is herewith filed and made a part of this bill.

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this matter have been settled; but he is informed that Mr. Tiernan has from great age retired from business, and has and does rely on his clerks and agents, and that this difficulty is not with him, but them. Your orator makes the judgment and notes in favor of Tiernan against T. D. Owings as part of this bill. Your orator states that he is not able to get any compensation for the amount overpaid to the defendant by the rules of the common law, owing to the nonresidence of the defendant, but he has in his hands the sum of $, received of Joseph Eve, &c., citizens of Kentucky, and the said Joseph Eve, J. G. Eve, Randolph Adams, and James Ballinger are indebted to the said defendant the sum of $. Your orator therefore prays the com'ths writ of injunction and attachment against the said Joseph Eve, J. G. Eve, Randolph Adams, and James Ballinger, by which they may be enjoined from paying over what they owe to the said Tiernan, until the further order of this Court, and that they may be summoned and as stakeholders be compelled, on oath, to disclose the amount they owe said Tiernan, and to pay it to your orator, or into this Court, and after settling the true balance due from Tiernan, from the debt aforesaid, and what he owes your orator, the proper decrees and orders be made, &c.

Your orator would further state, that after the arrangement was made before referred to, the said Ellicott & Meredith levied the executions in the name of Smith, upon all the lands bought by the defendant Tiernan, and became the purchasers at the amount of their debt of the same. That after this latter purchase, the Bank of the United States, on their bill filed against said Smith, and Ellicott and Meredith, caused said lands, with others, to be sold by and under a decree of said Court, at the court-house door in the city of Lexington, when your orator, for the Bank of the United States, became the purchaser of the whole lands, as well as other lands included in Smith's deed of trust; and at a subsequent date, your orator purchased from the President, Directors and Company of the Bank of the United States, their whole title under said sale and deed of trust, &c., as will appear by the decree of the Court aforesaid, and the deed of the Bank, which are made a part of this bill, so that your orator thereby became vested with the whole legal and equitable rights of the Bank, and a claim on Tiernan to have conveyed to him the whole lands he had purchased of Owings, as aforesaid. Under this state of the case, your orator conveyed to the Honorable James E. Davis, the whole lands bought by Tiernan, the said Davis being the Commissioner appointed to sell and convey under the decree, and said Davis has reconveyed to your orator, which latter deeds are also made parts of this bill.

Your orator states, that owing to the power of attorney under which he acted not having been recorded in time and not acknowledged in open Court, he was not satisfied with the deed of the said Davis, and has requested a deed from the defendant; and for that

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purpose has sent him a deed for his signature, but the defendant has not only failed to execute the deed, but to make any answer to his letter whatever. That it is the intention of the defendant or his family, to give your orator some difficulty in the title, and he feels insecure in the same; so much so, that he cannot venture to sell and warrant it, or improve it as property, until he obtains a release of all title from the defendant. In tender consideration and forasmuch as your orator is without remedy at law, may it please your Honor to grant to your orator the commonwealth's writ of *S'poe*, by which the defendants may full, true, and perfect answers make, and on final hearing may the proper decree or decrees be made, and your orator will ever pray.

WOOLLEY & WICKLIFFE.

STATE OF KENTUCKY,
Fayette County, sct:

This day Robert Wickliffe made oath that the allegations—that he was the security of Luke Tiernan, in the suits aforesaid, and paid the costs, and that none was advanced or paid by Tiernan, except a few dollars (if that much), are, as made, according to his best recollection and belief, substantially true, as are the other allegations of the bill, and known to be so by the defendant Tiernan; he therefore requires his personal answer as to these charges, and the charge of the service of the defendant, not only because it would be difficult, but almost impossible for him to prove it at this late period, the amounts paid by him, and the nature and extent of his personal services in the suits, without an answer on oath from the defendant.

Given under my hand this day of July, 1838.

R. Wickliffe states on oath, that the amount of money received by Tiernan, and the mode of payment stated in the bill are known to the defendant Tiernan; and also, that he knows that the allegations in your orator's bill, of the payments made as the security of Tiernan, of the costs as charged in the bill, are substantially true; as well of the personal and professional services performed for the defendant. That he does not believe that he can make full proof of the charges, without an answer from the defendant on oath.

R. WICKLIFFE.

STATE OF KENTUCKY,
Fayette County, sct:

Robert Wickliffe having made oath before me, that the matters stated in the foregoing bill are true in substance and in fact, the Clerk of the General Court is directed to issue a restraining order in conformity to the prayer of the bill on the complainants executing bond in his office in the penalty of $400, payable to the defendant, Tiernan, and conditioned for the payment of all such damages as he may sustain by reason of the said restraining order. Given

under my hand as a Circuit Judge of the Commonwealth of Kentucky, this 7th day of July, 1838.

DAN'L MAYES.

The Commonwealth of Kentucky, to the Sheriff of Knox County, greeting:—

We command you to summon Luke Tiernan, a citizen and resident of the State of Maryland, and Joseph Eve, J. G. Eve, Randolph Adams, and James Ballinger, to appear before the Judge of our General Court, at the Court-house in Frankfort, on the first day of their August term, to answer a certain bill in chancery exhibited against them by Robert Wickliffe, a citizen and resident of the State of Kentucky, and this they shall in nowise omit, under the penalty of $100, and have then there this writ.

Witness Alexander H. Rennick, Clerk of our said Court at the State House aforesaid, this 19th day of July, 1838, and in the 48th year of the Commonwealth.

Attest, A. H. RENNICK,
C. G. C.

Memo.: This is to enjoin and restrain the defendants, Joseph Eve, J. G. Eve, Randolph Adams, and James Ballinger, from paying over any moneys to their co-defendant, Luke Tiernan, which they may be owing him, as the complainant has entered into an injunction bond agreeably to law, until the further order of the General Court.

Attest, A. H. RENNICK,
C. G. C.

Came to hand July 28, 1838, executed on Joseph Eve and James Ballinger and Randolph Adams the same day, and the other defendant not found in Knox County.

JOS. BALLINGER,
D. S.
for R. BALLINGER,
S. K. C.

KENTUCKY,
Franklin Circuit Court, sct:

I, Philip Swigirt, Clerk of the Court aforesaid, do certify that the foregoing are true copies of the bill and subpœna in chancery, and Sheriff's return in the case from the General Court, of R. Wickliffe, *vs.* L. Tiernan, &c.

Witness my hand, this 1st November, 1851.

P. SWIGIRT,
C. f. C. C.

No. 8. Complainant's affidavit made and filed, October 27, 1852.

R. Wickliffe makes oath in open court that he hath not the original of the transfer and assignment of Charles Tiernan, nor does he know where it is, although he hath used his best endeavors to procure or find it, believing that Charles Tiernan is mistaken in his statement that the executors of Luke Tiernan destroyed it. He knows nothing of the subscribing witnesses, whether they be living or dead, and they do not reside in this State or district, as he feels satisfied and believes, nor has his attorney or agent, in Baltimore, been able, as he informs deponent, to get intelligence of where the deed or deeds are, nor has he been able to derive any information of where the witnesses or deeds aforesaid can be found, wherefore the proven copy filed is the highest and best evidence he can procure.

R. WICKLIFFE.

Sworn to, in open court, by R. Wickliffe, this 27th October, 1852.

JNO. A. MONROE,
C. C. C. K. D.

No. 9. Copy letter from Tiernan & Son to Wickliffe:—

BALTIMORE, *30th November*, 1832.

MR. ROBERT WICKLIFFE.

Dear Sir: Annexed you have two copies of exact obligations, signed by Joseph Eve and four others, all of Barboursville, Ky., with statement of the account, with interest made up to 1st January next: the parties bind themselves to pay the same in Baltimore. Mr. Eve paid the sums credited to Mr. Levy, of Lexington; the credits are less by the discount paid than that received by Mr. Leavy. About ten months since, Mr. Eve wrote us he would pay Mr. Levy $500; this payment has not been made. We wrote several letters to Mr. Eve relative to this payment, but no answer has been received, which leads us to apprehend he may be dead. You will please take *immediate measures* in this case, by suit in the U. S. Court, or the parties coming forward without any delay by paying the money or giving satisfactory security in a short time. The firm of L. T. & Sons was composed of L. T., C. T., and D. Williamson; the latter retired from the firm last April, and it is now continued by L. T. & C. T., under the firm of L. T. & Son. The original notes of Joseph Eve and others we have, and will be sent to you *when required.* Let us know, shortly, what you do, and hope no time will be lost in bringing this business to a speedy close. We have been very indulgent to Mr. Eve, and have depended on various promises which he has not fulfilled.

How does my claim stand as regards Owings and his securities. I am most desirous to have it closed, and am in much want of the money. Do everything in your power to have it finally closed.

Signed, LUKE TIERNAN.

Mr. Joseph Eve to Luke Tiernan & Son.

1832.				*Dr.*
April 18,	To your obligation this date payable 1st Dec., 1822 . . .	$1,308 44		
	To interests to 1st Jan., 1833 .	791 56		
			$2,100	
	" your obligation this date payable 1st December, 1823 .	1,383 15		
	" Interest to 1st Jan., 1833 .	754 51		
			2,138	48
1825.				
Dec. 31.	" Sundry postages to this date .	3 81		
	" Interest to 1st Jan. 1833 .	1 68		
			5	49
			$4,443	95
1825.				*Cr.*
Sept. 22.	By cash per Mr. Levy, of Lexington, and remitted to us .	$2 50		
	" Interest to 1st Jan. 1833 .	105 42		
			$355	42
	" Cash per Mr. Leavy, of Lexington, $500, less discount paid on remittance . . .	497 27		
	" Interest to 1st Jan. 1833 .	79 04		
			576	30
	Balance due 1 Jan. 1833		$931	72
			$3,512	23

BALTIMORE, *August* 26, 1833.

ROBERT WICKLIFFE, ESQ.,
Lexington, Ky.:

DEAR SIR: We are in receipt of your esteemed favor of 14th inst., and are extremely sorry to find that your partner has neglected to bring suit on the copies of the bonds of Joseph Eve and others, sent you 30th November, 1832. The oversight is almost inexcusable, as we were very particular in our instructions, and he is moreover in error about the Christian name of Judge Eve, which you will find by the bond is Joseph, and so mentioned in the copy sent you. We also mentioned that the original would be sent you when required, and as we had no intimation that they were wanted, we of course did not forward them. We annex you copy of one L. T. letter to you, and also copy of our account against J. Eve to 1st January, 1833; balance due us on that day, $3,512 23. I also

inclose you herewith the original of the bonds, say Joseph Eve and others, payable 1st December, 1822, for $1,308 44; and the other payable 1st December, 1823, for $1,383 95, which you will please to collect with the least possible delay. Please acknowledge receipt of the bonds at your earliest convenience.

Respectfully your friends, &c.,

LUKE TIERNAN & SON.

Indorsed as follows:—

This letter is admitted to be in the handwriting of Luke Tiernan.

J. HARLAN,
For Defendant.

No. 10. Letter from Joseph Eve to Wickliffe, dated February 7, 1835.

BARBOURSVILLE, *February* 7, 1835.

DEAR SIR: Yours of fifth inst. is this moment received; I most sincerely thank you, that you for your kindness in writing to me; however, I again repeat that I will pay the balance of the execution sooner than it could be made by law. You inquire why I have not sent the notes for the land I purchased of you last fall. I sent them on by Mr. Patton; he said you were not at home, and brought them back, but as they were not due, I supposed it would make very little difference with you, and intended to bring them in myself during the session of the legislature, but have been unable to ride. We intended going into the contract, and will send the notes by the first person who comes to Lexington. I had written to Gilbert last mail, apprising him that every man in this place was in favor of a Bank at Lexington; that we were indignant at the selfishness of Louisville, at going against your bank when they have two, and a saving institution, which is a bank in a little way; that the people of Lexington had managed all their banks well and with a liberality that gave entire satisfaction to the country. I think he will vote for the bill. Was I able to ride, I would go to Frankfort.

Your friend sincerely,

JOSEPH EVE.

Addressed, ROBERT H. WICKLIFFE, ESQ.,
Attorney at Law, Frankfort.

Indorsed: It is admitted that this letter is in the handwriting of the late Joseph Eve.

J. HARLAN,
Counsel for Defendants.

No. 11. Copy of letter from Joseph Eve to Wickliffe.

Jos. Eve to Wickliffe. } Copy Letter.

Galveston, *December* 18, 1842.

Dear Sir: I have just received a letter from Benjamin Eve, in which he says that Mr. R. Wickliffe has written to him, that if the balance of the debt coming to Messrs. Tiernan & Sons is not paid in a short time, that he will renew the execution. When I left Kentucky, you had filed your bill enjoining this money, which I had supposed was still pending, as I understood that there were many old and difficult matters to adjust between Mr. Tiernan and yourself. Be that, however, as it may, I must beg and beseech you, long as this debt has been owing, not to renew an execution.

It is like many others that I have been compelled to pay, a bad debt upon me, not of my own contracting, and from which I never received one cent's benefit, but a debt of John G. Eve's, who is ruined. I have already paid, on account of this debt to Mr. Tiernan as per receipts filed in the Federal Court, Clerk's Office in Frankfort $1,750, which nearly extinguished the first note, though judgment was rendered on both notes, running me to $29 84 costs, that being the amount of costs in each case. Since judgments were obtained, I have paid to you and Mr. Woolley $1,710, for which I hold your receipts, a memorandum of which I gave you when in Lexington on my way to Texas; making in all $3,460, which I have paid on this debt. I have always been under the impression that I sent to you or Maj. Woolley $500 by James Ballinger, for which I never got a receipt, or if I did, that it was mislaid, as I distinctly recollect when I left the $110 for you; I then supposed that that amount would about discharge this debt. I, however, know that I cannot and do not claim any further credits than my receipts show; I do, though, ask the favor of you to see the Major upon this subject, and examine both of your memorandums, which, I presume, will show how much each of you have received on this debt. I ask you to take this trouble, because I know that you have no wish to collect one dollar from me that I ought not to pay. I commenced life with but little fortune, but with most flattering prospects; I was sanguine and confiding in my disposition, warm in my attachments, with an unwavering devotedness to all whom I called friend, not counting cost or consequence when called on to serve them. I had a lucrative practice at the law, and had been prosperous in all my speculations and all my undertakings, until about the year 1818, when I was free from debt, and worth $40, or $50,000; I then became involved for friends for large sums of money, since which time I have been compelled to pay upwards of $30,000 for my imprudent confidence, without the shadow of ever being reimbursed one dollar, at a most ruinous sacrifice of property, credit, and feeling.

I have lived to the age of fifty-eight years, and to experience the mortifying and humiliating feeling of seeing many of the early companions of my life, who have shared my hospitality, engaged my confidence, participated in my prosperity by using my name and my money, and in that way involved me in all my pecuniary difficulties; men for whom I would have risked my life upon all fit occasions, the moment they discovered the clouds of adversity thickening around me, instead of offering me a helping hand or whispering one word of consolation, coldly turned their backs upon me. What then is so uncertain and changeable as the human heart? When we see all our intimacies, however ardent, so liable to cool; all our confidence, however unlimited, so often violated; and men for whom we have cultivated for years the warmest friendship, become estranged and often our most deadly foes, from the most trivial, selfish circumstance. When I received the appointment of Charge d'Affaires to Texas, I had believed, that after having been buffetted for years on a stormy sea by pecuniary embarrassments, and laboring like a slave, I had reached a safe port, by which, with prudence and economy, I could meet all claims against me, and once more be a free man. I left all my outfit to pay debts, and, although I have been here eighteen months, I have received only about $2,000 of my pay to sustain myself, the balance has all gone to pay debts. I have two sections of land in Arkansas; I have written to my agent there, to sell it for what it will bring, but it will not command money at any price. Such has been my anxiety to pay all claims against me, that I authorized Ben. Eve to sell my home place, the improvements of which have cost me $12,000, but he cannot do it for the money. About $6,000 more would release me from all claims against me; and if my friends would be patient, and I live so long and am permitted to remain here two years more, I pledge myself to save enough to pay all debts against me; but all are pressing, and now to be sacrificed after making the violent exertions which I have, is too bad. While I feel ashamed to do it, yet necessity compels me to ask of you, who have given me so many evidences of your kindness to me, to wait until some of my most pressing debts are paid. I think I can pay you in a year, but pledge myself to pay it in two years from this time; the favor shall never be forgotten, while my heart has a pulsation. You, who never oppressed any other man for a debt, I flatter myself, will not ruin me at this time.

Please write me your determination. You will naturally expect me to say something of Texas. In —— if the Texans could have peace with Mexico, the rich soil, so well adapted to the growth of sugar and cotton, and every other agricultural product, with the great facilities for raising every kind of stock, would make it in a few years, the most desirable and wealthy southern country upon the hemisphere. The people are bold, intelligent, chivalrous and enterprising. Ought not the government of the United States, fol-

lowing the example of Britain, France, and Russia, in giving Greece independence, say to Mexico, you must cease hostilities against Texas. My position is such, that I have not the right or inclination to say much about political matters. If I had, my opinions would have but little influence with the government, while yours from your age, standing, and political experience and intelligence, ought, and would have, influence with any government. I should like to know your opinion, as to the course the government of the United States ought to take on this momentous question. I feel perfectly satisfied, that the present administration is friendly to Texas, but how far it will and can go to aid Texas, is another matter.

That you may live long in the enjoyment of every blessing of prosperity and happiness that this world can bestow, is the sincere wish of your friend and obedient servant,

JOSEPH EVE.

R. WICKLIFFE, Esq.

The genuineness of this letter is admitted by defendants.

J. HARLAN,
Counsel for def'ts.

The foregoing letter is copied from the original, on file among the papers in the cause of Wickliffe *vs.* Tiernan's, Adm'r, &c., lately pending in the General Court of Kentucky.

Attest, P. SWIGIRT,
C. of C. C.

(*Statement of Account by Joseph Eve.*)

No. 12. Statement of accounts made by Joseph Eve.

Tiernan & Son, *vs.* John G. Eve and others, judgment for		$1,308 44
with interest from 1st December, 1822.		
Second judgment		1,383 95
with interest from 1st December, 1823.		
Tiernan's receipts filed in the cause.		
17 June, 1825,	$250 00	
Do. paid 27 Feb'y, 1827,	500 00	
Do. paid 26 Jan'y, 1829,	500 00	
Do. paid 20 March, 1830,	500 00	
	$1,750 00	

This amount should of rights, have been credited before suit brought; the above receipts were left with Mr. Hanna before judgment, and are now in the papers.

Paid to Col. Woolley, 15th Feb'y, 1834,	$600 00
Paid to Mr. Wickliffe, 5 Feb'y, 1835,	500 00
Paid do. . . .	500 00
Left with E. Sayre, &c., per receipts, 16 February, 1836, . . .	100 00
	$1,700 00

STATE OF KENTUCKY,

General Court, Aug 15, 1850:

This day James Davidson appeared in Court, and made oath that he was well acquainted with Joseph Eve; that he believes that the above account is in the handwriting of Joseph Eve, as he has often corresponded with said Eve.

A. H. RENNICK,
C. G. C.

The foregoing is copied from a paper on file in the cause of Wickliffe *vs.* Tiernan, *Adm'r*, &c., lately pending in the General Court of the State of Kentucky.

Attest, P. SWIGIRT,
C. of C. C.

(*Receipt* $250 00.)

Copy receipts from Wickliffe to Eve.

Received, Lexington, 17th June, 1825, of Mr. John G. Eve, two hundred and fifty dollars, United States notes, being on account of the notes of himself and others, to Messrs. Luke Tiernan & Sons, Baltimore.

$250. L. TIERNAN & SON,
by William Leavy & Son.

(*Receipt* $500.)

Received, Lexington, 20th February, 1827, of Mr. John G. Eve, five hundred dollars, for the account of Messrs. L. Tiernan, of Baltimore.

$500. WILL. LEAVY & SON.

(*Receipt* $500.)

Lexington, Jan'y 26, 1829, received of John G. Eve the sum of five hundred dollars for or on account of Luke Tiernan & Son, Baltimore.

SAML. T. LEAVY,
for William Leavy & Son.

(*Receipt* $500.)

Lexington, March 30, 1830, received of John G. Eve five hundred dollars for Luke Tiernan & Son.

WILLIAM LEAVY & SON,
By J. J. Hunter.

(*Receipt* $600.)

Received from Joseph Eve the sum of six hundred dollars on account of a judgment in the Federal Court of Kentucky of Luke Tiernan & Son against said Eve and others.

WICKLIFFE & WOOLLEY,
FRANKFORT, *Feb.* 15, 1834. *Atty's for Plaintiffs.*

(*Receipt* $500.)

Received from Joseph Eve, by the hands of Joseph Ballinger, five hundred dollars on account of a judgment in the Circuit Court of the United States for the District of Kentucky, in the name of Luke Tiernan & Son against said Eve.

WICKLIFFE & WOOLLEY,
Atty's for Luke Tiernan & Son.

LEXINGTON, *July* 15, 1835.

(*Receipt* $110.)

Received, Lexington, Feb. 16, 1836, for R. Wickliffe, Sr., one hundred and ten dollars of Joseph Eve.

E. K. SAYRE.

(*Receipt* $500.)

LEXINGTON, *Feb.* 5, 1835.

MY DEAR EVE:—

On reaching home on the 2d, I received your $500 of Mr. Porter, and wrote Mr. Tiernan your situation, and hope that he will sanction my withholding the execution. Why have you not send me the notes for the land I sold you—pray do so, if you wish the bargain to stand, as I presume you do. Another matter, deeply interesting to all, is pending before the legislature; I mean, a Bank at this place. Your man, Gilbert, goes against it. It is of vital importance to this place and to your county. Cannot you and your friends influence him? pray write him immediately to go for the bill. His constituents have a deep stake in the improvement of this town as a mart for their coal, salt, the improvement of the Kentucky, &c. Do not delay a moment to write to Gilbert, and any other member of either house, particularly the Senate, that you can influence to vote for it. I start immediately to Frankfort

to aid the passage of the bill, and let your letters come as fast as the post can bring them. Yours ever,

R. WICKLIFFE.

Addressed—The Hon. JOSEPH EVE,
Barboursville, Kentucky.

(A copy.)

Attest: JOHN H. HANNA,
C. C. C., K. D.

(*Complainant's Affidavit.*)

No. 14. Complainant's affidavit made and filed Oct. 29, 1852.

R. Wickliffe makes oath in open court, that his late partner, A. K. Woolley, departed this life about the month of July, 1849; which fact he prays may be entered on the record.

Sworn to in open court by R. Wickliffe, October 29, 1852.

JOHN A. MONROE,
Clerk.

JOSEPH EVE TO R. ADAMS, &c. } Copy mort.

No. 15. Copy mortgage from Joseph Eve to Randolph Adams, &c.

This Indenture, made this 11th day of April, 1825, between Joseph Eve, of the County of Knox and State of Kentucky of the one part, and Randolph Adams, of the County and State aforesaid of the other part, witnesseth: That the said Joseph Eve, for and in consideration of the sum of four thousand eight hundred dollars, hath, by these presents, bargained, granted, and sold unto the said Randolph Adams one tract or parcel of land lying and being in the county of Knox adjoining to Barboursville, containing two hundred and five acres, it being the same that the said Joseph and Benjamin Eve purchased of James Smith; the boundary of which will more fully appear by reference to a deed of conveyance from said James Smith to the said Joseph and Benjamin, recorded in the Knox County Court; also the following negro slaves, to wit: one negro woman, named Jenny, aged about 18 years; one negro boy, named Zachariah, about 18 months; one negro boy, named Jesse, aged about 14 years; also one other negro woman and her sucking child, about two months old, which negro woman is named Hester, aged about 28 years; one negro boy named Porter, aged about 11 years; one negro girl, named Creasy, aged about 3 years; one negro girl, named America, aged about 7 years; one negro girl, named Amelia, aged about 5 years; one negro boy, named Patrick, aged about 4 years; one negro girl, named Eliza, aged about 3 years, and one negro girl, named Caroline, aged about 2 years. The said tract, or parcel of land, and the aforesaid 13 negroes to

the said Randolph Adams, his heirs, &c., the said Joseph Eve will warrant, and by these presents forever defend. Yet these presents are upon the express condition and understanding that the said Joseph Eve is justly indebted *indebted* to the said Randolph Adams in the sum of about four hundred and twenty dollars due by note. And the said Adams is security for the said Joseph to Mrs. Jane Logan for five hundred and thirty dollars, due by note; the said Adams, is also security for the said Joseph to Luke Tiernan & Sons, merchants in Baltimore, for about three thousand dollars; the said Adams is also security for the said Joseph to the Bank of the Commonwealth for about two hundred and thirty dollars. Also to Louis Scruggs for about three hundred and twenty dollars, making in all, about four thousand eight hundred dollars. Now shall the said Joseph Eve pay, or cause to be paid, the said several sums as they may be attempted to be coerced, or at any time pay the debt which he is owing to said Adams, and get him a release, or otherwise well secure and indemnify the said Adams for his several liabilities for the said Joseph as aforesaid, then this indenture to be null and void, and of no effect whatever. But should a judgment at law, or in equity at any time be obtained against the said Adams in consequence of any of his liabilities for the said Joseph Eve heretofore named; and should the said Joseph Eve fail or refuse to pay the same, or at any time fail or refuse to pay the said sum of four hundred and twenty dollars due *due* from ——— to the said Adams, then and in that case the said Adams is, by these presents, invested with full power and authority to appoint an agent or attorney, with full power and authority to sell the aforesaid property specified, or so much thereof as will be sufficient to satisfy such debt or liability, the said agent or attorney first advertising the time and place of such sale at the court-house door in the town of Barboursville at least twenty days previous thereto: the said Joseph reserving to himself by these presents the right to direct what part of the foregoing property shall be first sold, and in case of a sale under the provisions of this indenture, the said agent or attorney is hereby vested with full power and authority to convey and deliver the property so sold, which, by these presents, shall be as valid and binding as if done by the said Joseph himself. But it is expressly understood by these presents that the said Joseph is to remain in possession of the aforesaid land and negroes, unless it may become necessary to sell them, or any of them, upon the foregoing conditions: this indenture only being intended as an indemnity and security to the said Adams for his debt and several liabilities as aforesaid.

In testimony whereof, the said Joseph hereunto sets his hand and affixes his seal, the day and date first written.

[SEAL.] JOSEPH EVE.

KNOX COUNTY, SCT:

I do certify, that on the 16th day of April, 1825, the foregoing deed or mortgage was acknowledged before me, by Joseph Eve, to be his act and deed; and the same is truly recorded in my office. Given under my hand this 26th day of May, 1825.

JAMES F. BALLINGER,
Clerk.

A true copy.
Attest: JAMES F. BALLINGER,
Clerk.

The foregoing is truly copied from a writing purporting to be a copy of a mortgage from Joseph Eve to Randolph Adams, on file in the cause of R. Wickliffe *vs.* L. Tiernan's administrator, lately tried in the General Court of Kentucky.

Attest, P. SWIGIRT,
C.f. C. C.

C. TIERNAN to L. TIERNAN. } Assignment.

No. 8. A paper purporting to be a copy of an indenture between C. Tiernan and L. Tiernan. This should have been inserted on page 117, *supra.*

(*Charles Tiernan and Luke Tiernan & Son—Assignment to Luke Tiernan.*)

This Indenture, made this twelfth day of February, in the year of our Lord one thousand eight hundred and thirty-eight, between Charles Tiernan, now in the City of New Orleans, Louisiana, formerly of the City of Baltimore, State of Maryland, of the one part, and Luke Tiernan, of Baltimore, State of Maryland, of the other part. Whereas, a partnership heretofore existed between the aforesaid Charles and Luke, under the name of Luke Tiernan & Son, carrying on business and trade in the City of Baltimore, which was dissolved on or about the first of August, eighteen hundred and thirty-six, at which time there was owing and due the aforesaid Luke Tiernan, on the books of the said firm of Luke Tiernan & Son, called "old account," as it stood on the books of Luke Tiernan & Sons when they dissolved, in April, eighteen hundred and thirty-two, amounting to the sum of eighty-seven thousand seven hundred and sixty-two dollars and ninety-eight cents, which capital has continued up to this date, and is now in the present firm of Luke Tiernan & Son, carried on by the said Charles Tiernan; no part of said sum has been drawn out by the said Luke Tiernan, nor has he been allowed any profit or interest on said sum from the dissolution of the old firm of Luke Tiernan & Sons, in April, eighteen hundred and thirty-two, to the first of August, eighteen hundred and thirty-six, when Luke Tiernan withdrew from the firm of Luke Tiernan & Son, nor has

Luke Tiernan received from said Charles Tiernan, or been paid by him, any part whatsoever of the aforesaid sum of eighty-seven thousand seven hundred and sixty-two dollars and ninety-eight cents, nor received any security or satisfaction for the same; neither has there been any part of the profits of the business of Luke Tiernan & Son, from the commencement, in April, eighteen hundred and thirty-two, to the first of August, eighteen hundred and thirty-six, nor any interest on the beforementioned capital, yet placed to the credit of Luke Tiernan.

And whereas, since the dissolution of the aforesaid firm of Luke Tiernan & Son, the said Charles Tiernan has carried on trade and commerce for his own exclusive account and benefit, in the name of Luke Tiernan & Son, the said Charles Tiernan being the only one interested in said concern, publication of which beforementioned dissolution and new firm were duly made in the City of Baltimore and elsewhere on or about the beforementioned time. And whereas, the said Charles Tiernan stands indebted as Luke Tiernan & Son, to the aforesaid Luke Tiernan for large cash advances, amounting to the sum of forty-five thousand three hundred and sixty-seven dollars and eighty-seven cents; and the said Charles Tiernan, under the firm of Luke Tiernan & Son, has executed a note to Luke Tiernan, payable on demand for said sum, dated November the first, eighteen hundred and thirty-seven, bearing interest from date and payable on demand for the aforesaid sum; and the said Luke Tiernan has mortgaged his property and stock, on which loans have been obtained, amounting to the sum of ninety-seven thousand eight hundred dollars, the whole amount of which has been paid to Charles Tiernan, for the use of this firm of Luke Tiernan & Son, also being bound for other large liabilities as payer and indorser on various bills and notes for the sole use and benefit of the said Charles Tiernan, under the firm of Luke Tiernan & Son, since the dissolution of the firm formed, and while conducting business in the name of the new firm of Luke Tiernan & Son, and for and in consideration of all such other sums as he, the said Luke Tiernan, may advance, or in any way he may become liable for hereafter for the said Luke Tiernan & Son, or Charles Tiernan; the said Charles Tiernan has agreed and proposed to assign all his estate and effects, of every kind, unto the said Luke Tiernan, for the purpose hereinafter mentioned. Now this indenture witnesseth, that in pursuance and in performance of the said proposal and agreement, and in consideration of the above recited premises and the further sum of five dollars to the said Charles Tiernan paid by the said Luke Tiernan, the receipt whereof is hereby acknowledged, the said Charles Tiernan as such, and for Luke Tiernan & Son, hath bargained, sold, assigned, transferred, and set over, and by these presents doth bargain, sell, assign, transfer, and set over unto the said Luke Tiernan, his executors, administrators, and assigns, all and singular the stock in trade, effects, debts, bonds, notes, sum and sums of money, books of accounts, and other things

due and owing to the said Charles Tiernan and the firm of Luke Tiernan & Son, and all the estate and effects whatsoever, whether real, personal, or mixed, of him the said Charles Tiernan and the firm of Luke Tiernan & Son, and all his and their estate and interest, claims and demands therein; to have and to hold, receive, prescribe, and take the same unto the said Luke Tiernan, his executors, administrators, and assigns; and it is hereby declared and agreed that the said Luke Tiernan, his executors and administrators, shall stand possessed of and interested in the assignment and transfer now made upon trust, and to the intent that the said Luke Tiernan shall and do, in the first place, pay and retain to and reimburse himself for all such costs and charges and expenses as he shall or may pay, sustain, or expend in carrying into effect these presents; and the said Luke shall apply the property and estate now assigned to the payment and satisfaction of the amounts, claims, and purposes before referred to, as well as to the payment of such advances or liabilities as he, the said Luke, may have already made or incurred, or may hereafter make or incur; and, after satisfaction of the whole of the above amounts, claims, purposes, and liabilities, and of such costs, charges, and expenses as aforesaid, then in trust that the said Luke Tiernan, his executor and administrator do and shall pay the surplus of the said property and estate unto the said Charles Tiernan, his executors, administrators, or assigns; and for the consideration and purposes aforesaid, the said Charles Tiernan as such, and for Luke Tiernan & Son, hath made, constituted, and appointed, and by these presents doth make, constitute, and appoint the said Luke Tiernan, his executors and administrators, his and their true and lawful attorney or attorneys, in the name of the said Charles Tiernan or Luke Tiernan & Son, or otherwise to adjust, settle, and liquidate all accounts, claims, and demands relating to the premises, and from time to time to collect, get in and use, and take all and any legal or equitable means, course, or expedients, for the recovery and receipt of all the debts and sums of money or other claims or demands mentioned, to be hereby assigned as aforesaid; and upon receipt thereof, or any part thereof, receipts, acquittances, and other effectual discharges, for the same or so much thereof as shall then be acknowledged or expressed to have been received, to make, sign, seal, and deliver, and compound for bad or dubious debt or debts, and one or more attorney or attorneys, agent or agents, under him for all or any of the purposes aforesaid from time to time to appoint, and again at his pleasure to displace, and further to do and execute all and every other act and acts requisite and expedient to be done in and about the premises, as fully and amply to all intents and purposes as he, the said Charles Tiernan, or Luke Tiernan & Son, might or could do, or have done, in his own or their persons, if these presents had not been made; and the said Charles Tiernan, or Luke Tiernan & Son, for himself and themselves, his and their heirs, executors, and administrators, do covenant, promise, and agree to and with the

said Luke Tiernan, his executors and administrators, by these presents, in manner following, viz: that the said Charles Tiernan, or Luke Tiernan & Son, his or their executors or administrators, shall and will at all times hereafter justify and allow, ratify and confirm all and whatever the said Luke Tiernan, his executors or administrators, shall lawfully do or cause to be done in and about the premises, and shall not nor will not revoke or make void all or any of the powers hereby given, or in pursuance of these presents to be given to the said Luke Tiernan, his executors or administrators, nor release, discharge, or compound for all or any of the debts, effects, property, claim, or demands mentioned or intended to be hereby assigned as aforesaid, nor sue for or intermeddle with the same or any part thereof, nor do anything whereby the recovery thereof, or any part of them, or any parts thereof shall be in anywise hindered or prevented, or otherwise act or interfere in or about the premises further or other than the said Luke Tiernan, his executors or administrators, shall devise or require. And also that the said Luke Tiernan, his executors or administrators, shall not be charged or chargeable with any sum or sums of money other than such as shall actually come into his or their possession, nor with or for any loss or charges which shall or may happen in or about the execution of these presents without his or their wilful default. In testimony and witness whereof, the said Charles Tiernan for himself, and Luke Tiernan & Son, have hereto set his and their hands and seals, the day and date above written.

[SEAL.] CHAS. TIERNAN,
[SEAL.] LUKE TIERNAN & SON,
[SEAL.] by CHAS. TIERNAN.

Witnesses,
F. M. GUYOL,
O. P. JACKSON.

STATE OF LOUISIANA,
City of New Orleans.

Be it remembered, and we, O. P. Jackson and F. M. Guyol, two Associate Judges of the City Court of New Orleans, and Justices of the Peace thereof, do hereby certify, that on the twelfth day of February, 1838, at the City of New Orleans, personally appeared, to us known, Charles Tiernan, the person named and described in the foregoing instrument or deed, who acknowledged before us on oath that he had signed the same as well for himself as for the firm of Luke Tiernan & Son, and that it was his act and deed. In testimony whereof, we have hereunto put our hands and seals this 12th day of February, 1838, at the City of New Orleans.

O. P. JACKSON, [SEAL.]
F. M. GUYOL, [SEAL.]

UNITED STATES OF AMERICA,
State of Louisiana, sct:

By Edward D. White, Governor of the State of Louisiana, these are to certify that F. M. Guyol and O. P. Jackson, whose names are subscribed to the instrument of writing herein annexed, are Associate Judges of the City Court of New Orleans; that their signatures are genuine, and that all their official acts as such are entitled to full faith and credit.

Given at New Orleans, under my hand and the seal of the State the twelfth day of February, one thousand eight hundred and thirty-eight, and of the Independence of the United States the sixty-second.

[L. S.] E. D. WHITE.

Received to be recorded the 23d day of December, 1840, at ¼ before 4 o'clock, P. M.; same day recorded and examined.

THOMAS KILL,
Clerk.

In testimony that the foregoing is a true copy, taken from Liber T. K. No. 62, folio 408, &c., one of the chattel records of Baltimore County, I hereto set my hand and affix the seal of Baltimore County Court, this second day of May, A. D. 1848.

A. W. BRADFORD,
Clerk of Baltimore County Court.

A copy attest,

A. H. RENNICK,
C. G. C.

Upon the rehearing of this cause the following depositions were also read:—

(*Deposition of William T. Sommerville.*)

WICKLIFFE, with the will annexed of TIERNAN, vs. EVES, ROBERT P. LETCHER, and others. } Interrogatories for Complainant.

Were you acquainted with Luke Tiernan, deceased, and his son Charles Tiernan?

2. Are you or not the administrator or executor of Luke Tiernan, in the State of Maryland?

3. Has Charles Tiernan an interest in or claim on the judgment of Luke Tiernan & Son, against Joseph Eve and John G. Eve, and others? Say all you know upon this subject.

4. Have you a copy of Luke Tiernan's will before you? Has Charles Tiernan complied with the requirements of that will in rela-

tion to a settlement of his agency for Luke Tiernan & Company, or has he made a full and satisfactory settlement with the executors of Luke Tiernan, as required by the will? Say all you know upon this subject.

5. You have before you an article of transfer from Tiernan to Luke Tiernan, bearing date 12th of February, 1838 (1828), of debts, accounts, &c., in which he covenants not to interfere in the collection of them. Say whether or not you have seen the original of this copy, and whether it is or the signature to it is not in the handwriting of Charles Tiernan. Also, whether he has ever acknowledged to you the genuineness of the original of this copy, and at what time was such acknowledgment made. Say all you know upon this subject; say also, if you know, what has become of the said original, or who has it.

6. State whether the defendants in this suit have, by letter or other means, endeavored to induce you to prevent the collection of this debt, and also whether or not they have represented to you that I had fraudulently or clandestinely taken out letters of administration, or that no part of the debt remained unpaid. If such representations have been made to you by letter, state the substance of the letter. Say all you know upon this subject.

7. Do you know anything more touching the subject upon which you have been interrogated? If so, state all you know.

A true copy.

Attest: JOHN A. MONROE,
C. C. C., K. D.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, Levin Gale, a commissioner appointed by the Circuit Court of the United States for the Fourth Circuit in and for the District of Maryland pursuant to the act of Congress entitled, "An Act for the more convenient taking of Affidavits and Bail in Civil Causes depending in the Courts of the United States," do hereby certify that in pursuance of the annexed commission issued out of the Eighth Circuit Court of the United States in and for the Kentucky District, in a cause wherein Robert Wickliffe, administrator with the will annexed of Luke Tiernan, is complainant, and Benjamin Eve, administrator of Joseph Eve, and in his own right, Richeson Adams, executor of Randolph Adams, James Ballinger, Robert P. Letcher, and Francis Ballinger are defendants, on the fifteenth day of March, in the year of our Lord one thousand eight hundred and fifty three, at my office in the city of Baltimore, within the District of Maryland, I proceeded to take the depositions of such witnesses as were produced before me. And William T. Sommerville appearing personally before me, and having been by me first carefully examined, and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the com-

plainant on the interrogatories annexed to the commission and herewith returned, makes oath, deposeth, and saith:—

1. *To the First Interrogatory.* I was acquainted with Luke Tiernan, deceased, and am acquainted with his son, Charles Tiernan.

2. *To the Second Interrogatory.* I am one of the executors of Luke Tiernan, and have acted as such in the State of Maryland.

3. *To the Third Interrogatory.* I am unable to say whether he has an interest in the judgment referred to, as I know nothing about it. Charles Tiernan applied for the benefit of the insolvent laws of Maryland, as will appear by the paper I now hold in my hand, marked Complainant's Exhibit C. T. S., No. 1.

[The paper herewith returned marked Complainant's Exhibit C. T. S. No. 1, was here produced and shown to the witness and filed with the commissioner.]

4. *To the Fourth Interrogatory.* I have looked at the copy of the will and codicil of Luke Tiernan contained in the paper now shown to me and marked "Complainant's Exhibit C. T. S., No. 2."

[The paper herewith returned marked Complainant's Exhibit C. T. S., No. 2, was here produced, and shown to the witness, and filed with the commissioner.]

Charles Tiernan has not complied with the requirements of that will and codicil in relation to a settlement of his agency for Luke Tiernan & Co. And has made no settlement at all with the executors of Luke Tiernan as required by said will and codicil.

5. *To the Fifth Interrogatory.* I have looked at the articles of transfer contained in the paper now shown to me, and marked Complainant's Exhibit C. T. S., No. 3, at from page 11 to page 16 inclusive of said paper.

[The paper herewith returned marked Complainant's Exhibit C. T. S., No. 3, was here produced, and shown to the witness, and filed with the commissioner.]

I have seen the original paper of which the paper spoken of is a copy. The signatures to that paper were in the handwriting of Charles Tiernan. I have heard Charles Tiernan acknowledge the genuineness of the signature; that was in the year 1839. I do not know what became of the original.

6. *To the Sixth Interrogatory.* I have have had no communication from or with the defendants or either of them.

7. *To the Seventh Interrogatory.* I believe the estate of Luke Tiernan to be insolvent. I know nothing whatever of advantage to either party in this matter unless it is that there is no prospect whatever of getting any account from Charles Tiernan of the affairs of the firm of Tiernan, Cuddy & Co., he denying at all times his accountability to the executors of Luke Tiernan.

W. T. SOMMERVILLE.

Thereupon the further taking of depositions under and in pursuance of the annexed commission was adjourned until the sixteenth day of March, in the year eighteen hundred and fifty-three.

And on this sixteenth day of March, in the year eighteen hundred and fifty-three, the attorney for the complainant appeared before me, and stated that he had no further evidence to offer.

I, Levin Gale, commissioner as aforesaid, do hereby certify that the reason for taking the annexed deposition of William T. Sommerville is that the said William T. Sommerville resides in Baltimore County within the District of Maryland, and at a greater distance than one hundred miles from the place of trial of the cause in which this deposition is to be used. And I further certify that no notice of the time and place of taking the foregoing deposition was given by me to the defendants or either of them, or their or any of their attorneys, because neither of the said defendants nor any attorney of them or either of them resides within one hundred miles of the city of Baltimore, the place where said deposition was taken. And I do further certify that the said William T. Sommerville was by me first carefully examined, and cautioned, and duly sworn according to law to testify the whole truth, and that the foregoing deposition was then reduced to writing by me, and thereafter subscribed by the said William T. Sommerville in my presence. And I do further certify that I am not of counsel or attorney for either of the parties to the said cause, and that I am not interested in the event of this cause.

Given under my hand and seal, at the city of Baltimore, within the District of Maryland, this sixteenth day of March, in the year of our Lord one thousand eight hundred and fifty-three.

LEVIN GALE.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, Thomas Spicer, Clerk of the Circuit Court of the United States for the Fourth Circuit in and for the Maryland District, do hereby certify, that Levin Gale, Esq., before whom the foregoing deposition appears to have been taken, was at the time of taking the same, and now is, a Commissioner duly appointed by the said Circuit Court, in pursuance of the act of Congress, entitled "an Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States;" and to all his acts as such, full faith and credit is and ought to be given, as well in courts of justice as thereout.

[L. S.] In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court, this sixteenth day of March, in the year of our Lord one thousand eight hundred and fifty-three.

THO'S SPICER,
Clerk Circuit Court.

The foregoing deposition is indorsed as follows:—

The defendant objects to the reading of the deposition of *Charles Tiernan*, on the following grounds, to wit:—

1. Because said witness is incompetent to give evidence in this cause, and because he has testified to matters which cannot be proven by oral testimony.

2. Because he details facts not competent to be proved by parol. Wherefore it is prayed that the same be suppressed.

HARLAN & MONROE,
for Eves, Letcher, &c.

The following are the documents attached to and made part of the foregoing deposition.

(*C. T. S. No* 1.)

To the Commissioners of Insolvent Debtors for the city and county of Baltimore:

The petition of Charles Tiernan, of Baltimore city, and now residing therein, respectfully showeth:—

That your petitioner, Charles Tiernan, —— for debts which he is unable to pay, that he is willing and offers to deliver up to the use of his creditors, all his property, real, personal and mixed, to which he is in any way entitled (the necessary wearing apparel and bedding of himself and his family excepted), a schedule whereof, together with a list of his creditors and debtors, as he can ascertain them at present, are herewith on oath annexed.

Your petitioner hereunto annexes proof on oath, that he has resided three years next preceding this his application, within the State of Maryland. Your petitioner, therefore, prays you to grant to him the benefit of the Insolvent laws of this State, and he will pray, and so forth.

CHARLES TIERNAN.

BALTIMORE, *June* 14, 1842.

In the case of Charles Tiernan, an applicant for the benefit of the insolvent laws of Maryland, the undersigned Commissioners of Insolvent Debtors for the city and county of Baltimore, in pursuance of an Act of Assembly, entitled "an Act relating to insolvent debtors, in the city and county of Baltimore," do report to Baltimore County Court that, having diligently inquired and examined into the nature and circumstance of the said application, it appears that the said Charles Tiernan hath complied with the terms and conditions of the said insolvent laws, and hath acted fairly and *bona fide*, and the said Commissioners have granted to the said Charles Tiernan a final discharge. And the said Commissioners now return to Baltimore County Court, the schedule and all the proceedings in the matter of the application aforesaid.

Given under our hands this seventeenth day of November, in the year eighteen hundred and forty-two.

R. FRISBY,
E. PALMER,
Commissioners.

STATE OF MARYLAND,
City of Baltimore, sct:

I, Edward Dowling, Clerk of the Superior Court of Baltimore city, do hereby certify that the aforegoing is a true copy of the petition and final discharge, in the matter of the application of Charles Tiernan, for the benefit of the insolvent laws of said State, taken from the record of proceedings of Baltimore County Court, now remaining in my custody.

In testimony whereof I hereto set my hand and affix [L. S.] the seal of the Superior Court aforesaid, on this 12th day of March, A. D. 1853.

EDW'D DOWLING,
Clerk.

MARYLAND, SCT.

I, William Frick, Judge of the Superior Court of Baltimore city, in the Fifth Judicial Circuit of the State of Maryland, do certify that the foregoing attestation of Edward Dowling, Clerk of the said Court, is in due form and by the proper officer.

Given under my hand, at the city of Baltimore, this twelfth day of March, in the year one thousand eight hundred and fifty-three.

W'M FRICK.

STATE OF MARYLAND,
Baltimore City, sct:

I, Edward Dowling, Clerk of the Superior Court of Baltimore city, do hereby certify that the honorable William Frick, by whom the aforegoing certificate was made, and who has thereto subscribed his name, was at the time thereof Judge of the Superior Court of Baltimore city, duly elected, commissioned, and qualified.

In testimony whereof I hereto set my hand and affix [L. S.] the seal of the said Superior Court, this 12th day of March, A. D. 1853.

EDW'D DOWLING,
Clerk.

("*C. T. S. No. 2.*")

(*Luke Tiernan's Last Will and Testament.*)

In the name of God, Amen. I, Luke Tiernan, of the city of Baltimore, being of a sound disposing mind, memory, and under-

sta'ng, and being desirous to settle my worldly affairs, do therefore make and publish this my last will and testament, in manner and form following, that is to say: First, and principally, I commit my soul into the hands of Almighty God, and my body to be deposited in my family vault in the Catholic burial ground. And it is my request that no mourning whatever be distributed or used at my funeral.

Item. I give and bequeath to my beloved wife, Ann Tiernan, during her life, the use and occupation of my dwelling-house, and portion of ground thereto attached and now occupied by me in Charles street; also the use of all my plate, household and kitchen furniture, with the provisions and liquors that may be in the house at the time of my decease, and the sum of two thousand dollars annually to be paid her by my executors, hereafter named, in quarterly payments, during her life. To meet the payment of the said quarterly payments, I direct my executors to provide a fund to meet them out of such part of my estate as they in their judgment may believe to be most advisable.

Item. It is my will, and I do hereby authorize and empower my executor, the survivors or survivor of them, to sell and dispose of all my real and personal estate, wheresoever situate, which I may die possessed of, and to execute deed or deeds to the purchaser for the same; and the manner, time, or terms of such sale is discretionary with my executors to select and determine on, except that part of my estate which is bequeathed to my dear wife, which is not to be disturbed during her life. And the proceeds of such sales are to be applied as follows: In the first *instant* to raise a fund to provide for the quarterly payment above referred to, the balance to the following legacies and distributions:—

Item. I give and bequeath to my daughters, Maria Williamson and Rebecca Somerville, each the sum of four thousand dollars.

Item. I give and bequeath to my daughter Catherine Chartard the sum of eight thousand dollars.

Item. I give and bequeath to my son, Charles Tiernan, in trust for his children, the sum of four thousand dollars.

Item. I give and bequeath to my son, William Tiernan, the sum of six thousand dollars.

Item. I give and bequeath to my grandson, Luke Tiernan Brien, the sum of seven thousand dollars, to be paid to his guardian hereafter named and appointed, with the express condition, that the said guardian will only pay it over to his ward, on his, said ward, attaining the age of twenty-five years, and in the event of my said grandchild departing this life before he arrives at the age aforesaid, and without leaving issue legally begotten, then this legacy and all his interest in my estate from this, my will, shall be equally distributed amongst my two sons, Charles and William, and my three daughters, Maria Williamson, Rebecca Somerville, and Catharine Chartard, share and share alike.

Item. It is my will, and I hereby direct my executors, after the payment of my debts, the aforesaid legacies and bequests, to distribute the balance of my estate equally amongst my two sons, Charles and William, and my three daughters, Maria Williamson, Rebecca Somerville, and Catherine Chatard, and my grandson Luke Tiernan Brien, share and share alike.

Item. In the aforegoing legacies and bequests given to my children and my grandchild, it is my will in regard to the payment of them by my executors, that no priority or preference shall be given to any of them; that they must stand on an equality, and be paid proportionably as the funds in the hands of my executors will justify; and in the event of any deficiency in my estate to meet them fully, then they must abate proportionably, and no interest allowed.

Item. My having at different times made advances to my children, it is my will that such advances shall not be brought against them, and that on no account shall the said advances be noticed by my executors in any form whatsoever.

Item. Being always desirous of obtaining satisfactory statements of all the transactions of my agents, in which capacity my son Charles is now engaged in, in the south, a full and fair statement of his agency, I request my executors to require from him, and to pay over to them all moneys and effects of every kind, thereby to enable them to form a correct judgment how and in what manner the business entrusted to him as well as my late partner, Mr. Cuddy, has been conducted. In the event of my son Charles not complying with the request of my executors relative to his agency, then and in that case any interest given to him individually or to his children in this my will, shall be void and not to take effect, and his and their interest to be equally distributed amongst the remainder of my children.

Item. Being always desirous during my life to settle all my engagements in an amicable manner, and to avoid litigation, suits at law, or in chancery, it is my will that my executors in every instance that may occur where a suit at law or in chancery might be likely to be instituted against them, or that they may deem necessary for the benefit of my estate, to institute such suits, and to prevent litigation; I leave it entirely discretionary with them to have all disputes that may in any form occur in their duties as executors, to have them amicably adjusted by good and capable men by arbitrament.

I do hereby nominate, constitute, and appoint my son-in-law, Frederick Chatard, guardian to my grandson, Luke Tiernan Brien. I do hereby nominate, constitute, my friends, Alexander Neil, of Hagerstown, T. Parker Scott, of the city of Baltimore, and my grandson William Tiernan Somerville, executors of this my last will and testament, revoking and annulling all former wills by me heretofore made, ratifying and confirming this and none other, as my last will and testament.

In witness whereof, I, the said Luke Tiernan, *hath* hereunto subscribed my name and affixed my seal, this 9th day of October, in the year of our Lord one thousand eight hundred and thirty-nine.

LUKE TIERNAN, [SEAL.]

Signed, sealed, published, and declared by Luke Tiernan, the above named testator, as and for his last will and testament, who, at his request, and in his presence, and in the presence of each other, have signed our names as witnesses thereto.

P. TIERNAN,
JAS. C. BARRY,
G. EMERY.

BALTIMORE COUNTY, ss:

On the 14th day of November, 1839, came Patrick Tiernan, James C. Barry, and Gideon Emery, the three subscribing witnesses to the aforegoing last will and testament of Luke Tiernan, late of said county, deceased, and made oath on the Holy Evangely of Almighty God, that they did see the testator sign and seal this will; that they heard him publicly pronounce and declare the same to be his last will and testament; that at the time of his so doing he was, to the best of their apprehension, of sound and disposing mind, memory, and understanding, and that they subscribed their names as witnesses to this will in his presence, at his request, and in the presence of each other.

Sworn to before the subscriber, Register of Wills for Baltimore county.

D. M. PERINE.

Whereas, I, Luke Tiernan, of the City of Baltimore, have made and duly executed my last will and testament in writing, bearing date the ninth day of October, in the year eighteen hundred and thirty-nine, which said last will and testament, and every clause, bequest, and devise therein contained, I do hereby ratify and confirm (saving and excepting such clauses, bequests, and devises therein mentioned, as are by me hereinafter revoked and made void), and being desirous to alter some parts thereof, and of making additions thereto, do therefore hereby make this my codicil, which I will and direct shall be taken and held as a part of my said will and testament, in manner and form following, that is to say:—

Wherefore, I heretofore obtained a loan from the Merchants' Bank of Baltimore of a large sum of money, and made a mortgage of divers portions of my real estate to secure the payment thereof, and amongst other parts of my real estate, of two lots of ground with two three story brick dwelling houses erected thereon, situate, lying, and being on the south side of Lexington street, in the City

of Baltimore, between Charles and Liberty streets; and whereas, sometime in the month of December, in the year eighteen hundred and thirty-seven, I made a deed of the lots of ground and premises above mentioned, situated on Lexington street, to my son-in-law, Frederick Chartard, subject, nevertheless, to the said deed of mortgage; and whereas, it was and is my intention that the said Frederick Chartard should hold and enjoy the said lots of ground and premises free, clear, and discharged from all claims and incumbrances whatsoever: now, I hereby declare, and my will is, that if the said Frederick Chartard, his heirs, executors, administrators, or assigns, or any of them shall hereafter be called upon to make contribution towards the payment of the said mortgage debt, or any other debt or debts of mine whatsoever, he, the said Frederick Chartard, his heirs, executors, administrators, or assigns, or whosoever of them that may be required, and may make such contribution, shall be fully indemnified and repaid the same, together with interest thereon, and all costs and charges, and the same is hereby made a charge upon my estate, both real and personal, whether the same be the subject of a special devise or bequest, or otherwise, in order that the said Frederick Chartard, his heirs and assigns, may hold and enjoy the said lots of ground and premises free, clear, and discharged from all incumbrances thereon. Having appointed three executors by my aforesaid will, I am now of opinion two will be most ample, and shall therefore dispense with Mr. Thomas Parker Scott, and wish that appointment rescinded and made void. Mr. Scott has very large business of his own, and does not think he could attend to my business without material injury to his own.

In testimony whereof I have have hereunto set my hand and affixed my seal, this fourth day of November, in the year eighteen hundred and thirty-nine.

LUKE TIERNAN, [SEAL.]

Signed, sealed, published, and declared by Luke Tiernan, the testator, as and for a codicil to his last will and testament, in the presence of *our*, who, at his request, in his presence, and in the presence of each other, have subscribed our names as witnesses thereto.

Witnesses present:

P. TIERNAN,
JAS. C. BARRY,
JAMES MOTT.

BALTIMORE COUNTY, SS.

On the 14th day of November, 1839, came Patrick Tiernan, James C. Barry, and James Mott, the three subscribing witnesses to the aforegoing codicil to the last will and testament of Luke Tiernan, late of said county, deceased, and made oath on the Holy Evangely of Almighty God, that they did see the testator sign and

seal this codicil; that they heard him publish, pronounce, and declare the same to be a codicil to his last will and testament; that at the time of his so doing, he was, to the best of their apprehensions, of sound and disposing mind, memory, and understanding, and that they subscribed their names, as witnesses to this codicil, in his presence, at his request, and in the presence of each other.

Sworn to before the subscriber, Register of Wills for Baltimore county.

D. M. PERRINE.

(*Renunciation of Ann Tiernan.*)

I, Ann Tiernan, widow of Luke Tiernan, late of Baltimore county, deceased, do hereby renounce and quit all claim to any bequest or devise made to me by the last will of my husband, exhibited and proved according to law: and I elect to take, in lieu thereof, my dower or legal share of the estate of my said husband.

In testimony whereof I hereunto subscribe my name and affix my seal, this seventeenth day of April, 1840.

ANN TIERNAN, [SEAL.]

Witness,
P. TIERNAN.

Received to be recorded on the 18th day of April, 1840, same day filed, and recorded and examined.

Teste: D. M. PERRINE,
Register of Wills for Baltimore County.

In testimony that the aforegoing is a true copy taken from Wills Liber D. M. P., No. 17, folio 409, &c., one of the records in the office of the Register of Wills for Baltimore city, I hereunto subscribe my name, and affix the seal of my office, this ninth day of March, in the year of our Lord eighteen hundred and fifty-three.

[L. S.]

Teste: N. HICKMAN,
Register of Wills for Baltimore City.

MARYLAND, SCT.

I, James A. Reed, Presiding Judge of the Orphans' Court for Baltimore city, in the State aforesaid, do certify that the aforegoing attestation of N. Hickman, Register of Wills for Baltimore city, is in due form, and by the proper officer. Given under my hand, at the City of Baltimore, this ninth day of March, in the year of our Lord one thousand eight hundred and fifty-three.

JAMES A. REED.

STATE OF MARYLAND,
Baltimore City, ss:

I hereby certify that James A. Reed, gentleman, by whom the above certificate was given, and who hath thereto subscribed his name was, at the time of so doing, Chief Judge of the Orphans' Court for Baltimore City in the State of Maryland, duly elected, commissioned, and sworn.

In testimony whereof, I hereunto subscribe my name, [L. S.] and affix the seal of my office, this ninth day of March, in the year of our Lord eighteen hundred and fifty-three.

Teste: N. HICKMAN,
Register of Wills for Baltimore City.

C. T. S.—No. 3.

(*Charles Tiernan and Luke Tiernan & Son—Assignments to Luke Tiernan.*)

This Indenture, made this twelfth day of February, in the year of our Lord one thousand eight hundred and thirty-eight, between Charles Tiernan, of the City of New Orleans, Louisiana, formerly of the City of Baltimore, State of Maryland, of the one part, and Luke Tiernan of the City of Baltimore, State of Maryland, of the other part. Whereas, a partnership heretofore existed between the aforesaid Charles and Luke, under the name of Luke Tiernan & Son, carrying on business and trade in the City of Baltimore, which was dissolved on or about the 1st of August, eighteen hundred and thirty-six, at which time there was owing and due to the aforesaid Luke Tiernan on the books of the said firm of the said Luke Tiernan & Sons, called old account, as they stood on the books of Luke Tiernan & Son, when they dissolved in April, eighteen hundred and thirty-two, amounting to the sum of eighty-seven thousand seven hundred and sixty-two dollars and ninety-eight cents, which capital has continued up to this date, and is now in the present firm of Luke Tiernan & Son, carried on by the said Charles Tiernan. No part of said sum has been drawn out by the said Luke Tiernan, nor has he been allowed any profits or interest on said sum from the dissolution of the old firm of Luke Tiernan & Sons in April, eighteen hundred and thirty-two, to the first of August, eighteen hundred and thirty-six, when Luke Tiernan withdrew from the firm of Luke Tiernan & Sons, nor has Luke Tiernan received from said Charles Tiernan, or been paid by him any part whatever of the aforesaid sum of eighty-seven thousand seven hundred and sixty-two dollars and ninety-eight cents, nor received any security or satisfaction for the same; neither has there been any part of the profits of the business of Luke Tiernan & Sons from its commencement in April, eighteen hundred and thirty-two, to the first day of August,

eighteen hundred and thirty-six, nor any interest on the beforementioned capital yet placed to the credit of Luke Tiernan.

And whereas, since the dissolution of the aforesaid firm of Luke Tiernan & Son, the said Charles Tiernan has carried on trade and commerce for his own exclusive account and benefit, in the name of Luke Tiernan & Son, the said Charles Tiernan being the only one interested in said concern, publication of which beforementioned dissolution and new firm was duly made in the City of Baltimore and elsewhere on or about the beforementioned time. And whereas, the said Charles Tiernan stands indebted as Luke Tiernan & Son, to the aforesaid Luke Tiernan for large cash advances made, amounting to the sum of forty-five thousand three hundred and sixty-seven dollars and eighty-seven cents; and said Charles Tiernan, under the firm of Luke Tiernan & Son, has executed a note to Luke Tiernan, on demand for said sum, dated November first, eighteen hundred and thirty-seven, bearing interest from date and payable on demand for the aforesaid sum; and the said Luke Tiernan has mortgaged his property and stocks, on which loans have been obtained, amounting to the sum of ninety-seven thousand eight hundred dollars, the whole amount of which has been paid to Charles Tiernan, for the use of his firm of Luke Tiernan & Son, also being bound for the large liabilities as payer and indorser on various bills and notes for the sole use and benefit of said Charles Tiernan, under the firm of Luke Tiernan & Son, since the dissolution of the firm formed, and while conducting business in the name of the new firm of Luke Tiernan & Son, and for and in consideration of all such other sums as he, the said Luke Tiernan, may advance, or in any way he may become liable for hereafter for the said Luke Tiernan & Son, or Charles Tiernan; the said Charles Tiernan has agreed and proposed to assign all his estate and effects, of any kind, unto the said Luke Tiernan, for the purposes hereinafter mentioned. Now this indenture witnesseth, that in pursuance and in performance of the said proposal and agreement, and in consideration of the above recited premises and the further sum of five dollars to the said Charles Tiernan paid by the said Luke Tiernan & Son, the receipt whereof is hereby acknowledged, the said Charles Tiernan as such, and for Luke Tiernan & Son, hath bargained, sold, assigned, transferred, and set over, and by these presents doth bargain, sell, transfer, and set over unto the said Luke Tiernan, his executors, administrators, and assigns, all and singular the stock in trade, effects, debts, bonds, notes, sum and sums of money, books of accounts, and other things due and owing to the said Charles Tiernan and the firm of Luke Tiernan & Son, and all the estate and effects whatsoever, whether real, personal, or mixed, of him the said Charles Tiernan and the firm of Luke Tiernan & Son, and all his and their estate and interest, claims and demands therein; to have and to hold, receive, prescribe, and take the same unto the said Luke Tiernan, his executors, administrators, and assigns; and it is hereby declared and agreed that the

said Luke Tiernan, his executors and administrators, shall stand possessed of and interested in the assignment and transfer now made upon trust, and to the intent that said Luke Tiernan shall and do, in the first place, pay and retain to and reimburse himself for all such costs and charges and expenses as he shall or may pay, sustain, or expend in carrying into effect these presents; and the said Luke shall apply the property and estate now assigned to the payment and satisfaction of the amounts, claims, and purposes before referred to, as well as to the payment of such advances or liabilities as he, the said Luke, may have already made or incurred, or may hereafter make or incur; and, after satisfaction of the whole amounts, claims, purposes, and liabilities, and of such costs, charges, and expenses as aforesaid, then in trust that the said Luke Tiernan, his executors and administrators do and shall pay the surplus of the property and estate unto the said Charles Tiernan, his executors, administrators, and assigns; and for the consideration and purposes aforesaid, the said Charles Tiernan, and for Luke Tiernan & Son, hath made, constituted, and appointed, and by these presents doth make, constitute, and appoint the said Luke Tiernan, his executors and administrators, his and their true and lawful attorney or attorneys, in the name of the said Charles Tiernan or Luke Tiernan & Son, or otherwise to adjust, settle, and liquidate all accounts, claims, and demands relating to the premises, and from time to time to collect, get in and use, and take all or any legal means, courses, or expedients, for the recovery and receipt of all the debts or sums of money or other claims or demands mentioned, to be hereby assigned as aforesaid; and upon receipts thereof, or any part thereof, receipts, acquittances, and other effectual discharges, for the same or so much thereof as shall be acknowledged or expressed to have been received, to make, sign, seal, and deliver, and compound for bad and dubious debt or debts, and one or more attorney or attorneys, agent or agents, under him for all or any purposes aforesaid from time to time to appoint, and again at his pleasure displace, and further to do and execute all and every act and acts requisite and expedient to be done in and about the premises, as fully and amply to all intents and purposes as he, the said Charles Tiernan, or Luke Tiernan & Son, might or could do, or have done, in his own or their persons, if these presents had not been made; and the said Charles Tiernan, and Luke Tiernan & Son, for himself and themselves, his and their heirs, executors, and administrators, do covenant, promise, and agree to and with the said Luke Tiernan, his executors and administrators, by these presents, in the manner following, viz: that the said Charles Tiernan, or Luke Tiernan & Son, his or their executors and administrators, shall and will at all times hereafter justify and allow, satisfy and confirm all and whatsoever the said Luke Tiernan, his executors and administrators, shall lawfully do or cause to be done in and about the premises, and shall not nor will not revoke or make void all or any

of the powers hereby given, or in pursuance of these presents to be given to the said Luke Tiernan, his executors and administrators, nor release, discharge, or compound for all or any of the debts, effects, property, claims, or demands mentioned or intended to be hereby assigned as aforesaid, nor sue nor intermeddle with the same or any part thereof, nor do anything whereby the recovery thereof, nor any part of them, or of any parts thereof shall be in anywise hindered or prevented, or otherwise act or interfere in or about the premises further or other than the said Luke Tiernan, his executors or administrators, shall desire or require. And also that the said Luke Tiernan, his executors and administrators, shall not be charged or chargeable with any sum or sums of money other than such as shall actually come into his or their possession, nor with or for any loss or charges which shall or may happen in or about the execution of these presents without his or their wilful default. In testimony and witness whereof, the said Charles Tiernan for himself, and for Luke Tiernan & Son, have hereunto set his and their hands and seals, the day and year above written.

[SEAL.] CHAS. TIERNAN,
[SEAL.] LUKE TIERNAN & SON,
[SEAL.] by CHAS. TIERNAN.

Witnesses,
F. M. GUYOL,
O. P. JACKSON.

STATE OF LOUISIANA,
City of New Orleans, ss:

Be it remembered that we, O. P. Jackson and F. M. Guyol, two Associate Judges of the City Court of New Orleans, and Justices of the Peace thereof, do hereby certify that, on the 12th day of February, 1838, at the City of New Orleans, personally appeared, to us known, Charles Tiernan, the person named and described in the foregoing indenture or deed, who acknowledged before us on oath that he had signed the same as well for himself as for the firm of Luke Tiernan & Son, and that it was his act and deed. In testimony whereof, we have put our hands and seals, this 12th day of February, 1838, at the City of New Orleans.

O. P. JACKSON, [SEAL.]
F. M. GUYOL, [SEAL.]

UNITED STATES OF AMERICA,
State of Louisiana:

By Edward D. White, Governor of the State of Louisiana. These are to certify that F. M. Guyol and O. P. Jackson, whose names are subscribed to the instrument of writing herein annexed, are Associate Judges of the City Court of New Orleans, that their signatures

are genuine, and that all their official acts as such are entitled to full faith and credit.

Given at New Orleans, under my hand and the seal of the State, this twelfth day of February, one thousand eight hundred and thirty-eight, and of the Independence of the United States the sixty-second.

[L. S.] E. D. WHITE.

Received to be recorded this 23d December, 1840, at ¼ before 4 o'clock P. M. Same day recorded and examined.

THOS. KILL,
Clerk.

In testimony that the foregoing is truly copied from Liber T. K., No. 62, folio 408, &c., one of the chattel records of Baltimore County Court. I hereto subscribe my name and affix the seal of said Court, this 29th day of December, 1849.

[L. S.] A. M. BRADFORD,
Clerk.

(*Deposition of Alex. Neil.*)

Deposition of Alexander Neil.

R. WICKLIFFE, administrator, with the will annexed, of L. TIERNAN, vs. EVES, ROBERT P. LETCHER, and others. } Interrogatories for Complainant.

1. Are you acquainted with Luke Tiernan, deceased, and his son, Charles Tiernan?

2. Are you or not the administrator or executor of Luke Tiernan in the State of Maryland?

3. Has Charles Tiernan an interest in or claim on the judgment of Luke Tiernan & Sons, against Joseph Eve and John G. Eve, and others? Say all you know upon this subject.

4. You have a copy of Luke Tiernan's will before you. Has Charles Tiernan complied with the requirements of that will in relation to a settlement of his agency for Luke Tiernan & Company? Or has he made a full and satisfactory settlement with the executors of Luke Tiernan as required by the will? Say all you know upon this subject.

5. You have before you an article of transfer from Charles Tiernan to Luke Tiernan, bearing date 12th of February, 1838, of debts, accounts, &c., in which he covenants not to interfere in the collection of them. Say whether or not you have seen the original of this copy, and whether it is or whether the signature to it is not in the handwriting of Charles Tiernan. Also, whether he has ever acknowledged to you the genuineness of the original of this copy, and

at what time was such acknowledgment made? Say all you know upon this subject; say also, if you know, what has become of the said original, or who has it.

6. State whether the defendants in this suit have, by letter or other means, endeavored to induce you to prevent the collection of this debt; and also, whether or not they have represented to you that I had fraudulently and clandestinely taken out letters of administration, and that no part of the debt remained unpaid. If such representations have been made to you by letter, state the substance of the letter; say all you know upon this subject.

7. Do you know anything more touching the subject upon which you have been interrogated? If so, state all you know.

A copy.

Attest: JOHN A. MONROE,
C. C. C., K. D.

In pursuance of the annexed commission, I, Thomas E. Schleigh, Mayor of the Town of Hagerstown, one of the persons to whom said commission was directed, did, on the twenty-second day of March, 1853, at my office in said town, cause Alexander Neil, Sr., a witness in said commission named, to appear before me, and having first administered to him an oath according to law that the answers he should give to the interrogatories exhibited and accompanying said commission should be the truth, proceeded to take his answers thereto as follows:—

To the first interrogatory, he answers and says: He well knew Luke Tiernan, now dead, and Charles Tiernan, his son.

2. To the second interrogatory, he answers and says: That he is one of the executors of said Luke Tiernan, late of Baltimore City.

3. To the third interrogatory, he answers and says: That Charles Tiernan was one of the firm of Luke Tiernan & Son, and as such this deponent presumes by operation of law, he being the surviving partner, has entire control of the same.

4. In answer to the fourth interrogatory, this deponent says: He has now before him a paper writing, marked with the letters L. T., which is a true copy of the last will and testament of Luke Tiernan, and returned with these papers. He further saith, that he is not aware that Charles Tiernan had any agency for Luke Tiernan and Company, nor has he settled any accounts with this deponent as executor of Luke Tiernan as such agent. That no settlement has been made by said Charles with this deponent, nor can this deponent call upon him so to do, until all the debts of the different firms of which he was a member in conjunction with Luke Tiernan, have been fully paid, of which several firms there are numerous debts, as this deponent is informed, still outstanding.

5. To this interrogatory, the fifth, this deponent answereth and saith: That he has now before him an article of transfer from Charles Tiernan to Luke Tiernan, dated 12th February, 1838, marked with

the letters L. T. & S., and returned with these papers. That this deponent has seen the original, of which this is a true copy, and that said original was signed by Charles Tiernan in his proper handwriting; that said Charles Tiernan has acknowledged to this deponent the genuineness of said signature to said original, of which this is a copy, and that said acknowledgment was made as hereinafter stated.

That, as one of the executors of Luke Tiernan, he came to the possession of said original paper, and as such claimed the property therein; that Charles Tiernan, not disputing the genuineness of said paper, resisted the claim preferred by this deponent under the same, whereupon a bill was filed by the said Charles Tiernan, in Baltimore County Court, as a Court of Equity, against this deponent and his co-executor, upon which bill such proceedings were had that the same case and all the matters in said bill were referred to referees, who did, on the sixth day of September, 1841, award and determine that the deed of assignment referred to was executed and delivered only upon a condition which was never performed, and did award that said deed of assignment was inoperative and void, and that the same be cancelled and annulled. And this deponent presumes the original is filed among the proceedings of said case. That in consequence of this decree this deponent had nothing further to do with said paper.

6. To the sixth interrogatory, deponent saith: That none of the defendants in the suit referred to in this interrogatory, have by letter or other means endeavored to induce this deponent to prevent the collection of the debt referred to, nor did they represent to him that Robert Wickliffe, administrator with the will annexed of Luke Tiernan, had fraudulently and clandestinely taken out letters of administration, or that no part of the debt remains unpaid.

7. In answer to this interrogatory, deponent saith: That he knows nothing further touching the subject upon which he has been interrogated.

ALEX. NEIL.

(The papers referred to in the foregoing deposition are contained in this record, *supra* pages.)

There being no other witness to examine before me in relation to the above matters; whereupon I, the said Thomas E. Schleigh, closed said commission, and herewith returned the same to the Honorable the Judges of the Federal Court at Frankfort, Kentucky.

In witness whereof, I have hereto subscribed my name and affixed my official seal, this 22d day of March, 1853.

[L. S.] T. E. SCHLEIGH.

The foregoing deposition is indorsed as follows:—

The defendants except to the within deposition of Alex. Neil, for the following causes:—

1. The deposition is not in the handwriting of the deponent.
2. It is not in the handwriting of the officer before whom it was taken.
3. The certificate is not in proper form.
4. The witness is incompetent to testify in this case.

Wherefore defendants pray that said deposition be suppressed.

MONROE & HARLAN, for
Defendants.

(*Appeal Bond.*)

Appeal Bond.

UNITED STATES OF AMERICA,
Eighth Circuit, Kentucky District.

Know all men by these presents that we, Robert Wickliffe, administrator, with the will annexed of Luke Tiernan, deceased, and William Preston, of the City of Louisville, are held and firmly bound unto Benjamin Eve in his own right, and as administrator of Joseph Eve, Richardson Adams, executor of Randolph Adams, deceased, Robert P. Letcher, James Ballinger, and Franklin Ballinger, in the penal sum of five hundred dollars, well and truly to be made. We bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 28th day of June, 1853.

Whereas, the above bound Robert Wickliffe has prayed for and obtained an appeal from a decree of the Eighth Circuit Court of the United States in and for the Kentucky District, pronounced at the present May Term, A. D. 1853, of said court, in a certain suit in chancery wherein the said Robert Wickliffe, administrator, with the will annexed of Luke Tiernan, deceased, was complainant, and the said Benjamin Eve, in his own right and as administrator of Joseph Eve, deceased, Richardson Adams, executor of Randolph Adams, Robert P. Letcher, James Ballinger, and Franklin Ballinger, were defendants.

Now the condition of the above obligation is such, that if the said Robert Wickliffe shall well and truly prosecute the said appeal with effect, or on failure thereof pay to Benjamin Eve, in his own right and as administrator aforesaid, Richardson Adams, executor as aforesaid, Robert P. Letcher, James Ballinger, and Franklin Ballinger, all such costs and damages that may be awarded against him, then this obligation to be void, otherwise to remain in full force and virtue.

ROBERT WICKLIFFE, [SEAL.]
WILLIAM PRESTON, [SEAL.]
By his Attorney, ROB'T WICKLIFFE.

UNITED STATES OF AMERICA,
Eighth Circuit District of Kentucky, ss:

I, John A. Monroe, Clerk of the Circuit Court of the United States for the Circuit and District aforesaid, hereby certify that the foregoing one hundred and seventy pages (this included) contain a full and true transcript of the record and proceedings had in the suit therein named.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, this 29th day of August, eighteen hundred and fifty-three.

JOHN A. MONROE,
Clerk.